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Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES
October Term, 2004

Rita C. Ferguson, *Petitioner,*
v.
Township of Hamburg, *Respondent.*

On Petition for a Writ of Certiorari to the
Michigan Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Pro Se

QUESTIONS PRESENTED

I.

Whether Petitioner's rights under the Due Process Clause have been violated where, under state law, she has been denied any written notice or opportunity for a meaningful and timely hearing either prior to or after the inclusion of her property into a sewer special assessment district; and, whether Petitioner's rights under the Due Process Clause have been violated where, under state law, she has been denied any written notice or opportunity for a meaningful and timely hearing either prior to or after the amount of a disproportionate triple sewer special assessment lien attached to her property.

II.

Whether Petitioner's rights under the Equal Protection Clause have been violated as a result of the wrongful inclusion of her property into the special assessment district and as a result of the unfairly disproportionate amount of the special assessment.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2004

RITA C. FERGUSON, *Petitioner,*
v.
TOWNSHIP OF HAMBURG, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

Rita C. Ferguson respectfully petitions for a writ of certiorari to review the per curiam order of the Michigan Court of Appeals in this case.

OPINIONS BELOW

The per curiam orders of the Michigan Court of Appeals are unreported.
The orders of the Michigan Tax Tribunal are unreported.

JURISDICTION

The Michigan Supreme Court denied leave to appeal on October 25, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

STATUTORY PROVISIONS INVOLVED

US Cons, Am V,XIV
42 U.S.C. Section 1983
MCLA 41.721 et seq
MCLA 41.724a(3)
MCLA 211.741 et seq
MCLA 333.12751(c)
MCLA 600.5855

STATEMENT

On 4-20-00 Petitioner met with the township Supervisor to discuss a 4-5-00 letter, Exhibit 1, soliciting signatures for a Petition for Sanitary Sewers. Petitioner asked why the letter had not been sent to her residence at 9715 Daisy Lane, Dexter, MI 48130. The Supervisor concluded that the township had her wrong address and wrote down her correct address, and said he would change it. He also instructed her to give her change of address to the township secretary, which she did upon leaving.

Petitioner explained that since her four apartment leases were coming due, she needed to know what the sewer would cost before she would consider signing the petition. The Supervisor said the same thing as the letter, based on his experience with the other sewers, the cost would be $12,-13,000. "Approximately $12,000-13,000 per occupied parcel, or $6,500 per vacant parcel…Actual final cost will be determined after the project is sent out to bid and presented to property owners prior to establishing a special assessment district."

At this meeting Petitioner stated her objections to the sewer, including the fact that the building on her property was more than 400 feet distant from the proposed sewer location. A heated debate ensued about whether the building was more than 400 feet away, the township Supervisor absolutely insisting it was not more than 400 feet away. The Petitioner told the Supervisor that she knew how long her driveway was, and if he had any doubts he should send someone out to measure it. She refused to sign the petition. The Supervisor said it didn't matter whether she signed it or not, and threatened to force her property into the special assessment district.

A notice of 1st Public Hearing was mailed to Petitioner's wrong address two months later, on 6-21-00. Petitioner never received this notice. It is an undisputed fact that the township mailed this mandatory notice to the wrong address. The wrong address used was 11505 Dunlavy Lane, Whitmore Lake, MI 48189.

According to the township utilities coordinator, Affidavit of Brittany K. Campbell, Exhibit 2,

> " 5. The first public hearing...notice for that hearing was mailed on June 21, 2000.
>
> 6. The second public hearing...notice for that hearing was mailed December 22, 2000.
>
> 7. I prepared both notices for mailing...11505 Dunlavy Lane...That is where I sent her notices concerning the public hearings dealing with the creation of the ...sanitary sewer project special assessment district."

It is an uncontested fact that notices for both 1st and 2nd Public Hearings were mailed to the wrong address for Mrs. Ferguson. Mrs. Ferguson lived in an adjoining county and the property was occupied by four tenants, one tenant in each apartment. These apartments are very small, on average less than 600 square feet.

On 10-7-00, Petitioner met John Adams, township sewer engineer, at the 11505 Dunlavy property. She asked him the same question she had asked the Supervisor... how much was the proposed sewer going to cost? John Adams told her he wouldn't know until all measurements had been taken and his engineering plans were completed. He said the township would send a letter notifying the owners of the cost once his engineering was completed.

Petitioner believed John Adams was gathering information, so that actual costs, as the Supervisor had indicated, and as the 4-5-00 letter, Exhibit 1, had indicated could be submitted

to all owners "prior to establishing a special assessment district."

Adams never requested petitioner to sign a grinder pump location sheet prior to her leaving to run errands. Adams did not advise her of any 1st or 2nd Public Hearings. Nor did he advise her of her legal right to appear and protest and appeal to the Michigan Tax Tribunal within 30 days. Attached are the rebuttal affidavits of Rita C. Ferguson, Exhibit 3, and Michael A. Ferguson, Exhibit 4, which both the Michigan Tax Tribunal and the Court of Appeals erroneously failed to consider.

Adams did ask Petitioner about the location of underground utilities and the location of the septic tank and drainfield. Petitioner referred him to her husband as someone who had more knowledge of these matters before she left. His grinder pump location sheet does establish the fact that he was there to measure the property, and that the property was too far away from the proposed sewer line. It shows the proposed grinder pump is over 520 feet away. His actual engineering drawings, Exhibit 5, indicate the sewer line is 550 feet away from the building.

A notice of 2nd Public Hearing was mailed 12-22-00. As the affidavit of Campbell establishes, Exhibit 2, it is an undisputed fact that this notice was mailed to the wrong address for the Petitioner. Petitioner never received this notice.

Some 12 months after the mailing of the second notice to the wrong address, Petitioner received a sewer amortization schedule (12-6-01), Exhibit 6, advising her that her property had been placed on the township sewer assessment roll, not in the amount of $12-13,000 as the Supervisor and the original 4-5-00 petition letter, Exhibit 1, had represented to her, but in the amount of $38,073.79. She went to the township the very next day, Friday, December 7, 2001 to

protest and object to the bill, and to object to the inclusion of her property.

The utilities coordinator said she was being charged a triple special assessment and that the matter was "etched in stone", and that she had no right of appeal because she had not appeared and protested at a 1-15-01 meeting, some eleven months earlier. Petitioner told the utilities coordinator that no one had sent her a notice of a 1-15-01 meeting. After reviewing a copy of Ordinance 69, she requested a hook up and grievance meter to adjust the triple special assessment, pointing out that only four people lived on the premises, and sewer usage would be minimal. The utilities coordinator refused, saying the grievance procedure was available only to commercial and industrial businesses, and not residential businesses.

Unsatisfied, Petitioner insisted on taking the matter up with the Supervisor. She had given her change of address to him, and he knew the property was too far away. The earliest the Supervisor could see her was December 21, 2001.

Four business days later Petitioner's mortgage bank paid the year end tax bill, Exhibit 7, in the amount of $7,595.30, sent to it by the township. There is no notice on the tax bill clearly identifying a charge for a special assessment.

Petitioner met with the Supervisor on 12-21-01. She confronted him with the fact that she had personally given him and the township secretary her change of address on 4-20-00. She reminded him that he had promised that he would personally see to it that the address would be changed. If he had, then why, she asked, had she not been notified of the 1-15-01 meeting the utilities coordinator had told her about. The Supervisor remembered the change of address. He told her she had no right of appeal, as she had not protested at the 1-15-01 meeting. He stated that he was an attorney and that since publication of the 1-15-01 meeting was made in the paper, that was sufficient notice under the law, and that he could cite many cases for his position.

She reminded him that she had objected to the inclusion of her property because the building was more than 400 feet away and that he had told her final costs would be submitted to owners before a decision was made. She explained to him that since there were only four people living on the premises, a triple assessment was excessive, and requested a hook up and grievance meter under Ordinance 69. The Supervisor stated that he would be sympathetic to the idea of installing a meter if Petitioner was not in the special assessment district, but since she was, the township didn't have to be fair to her.

On 12-31-01 Petitioner filed a written appeal, Exhibit 8, with the township Board and the township Assessor. She objected to both the special assessment and the amount of the special assessment, and requested assistance with forms and instructions.

On 1-3-02 the township Assessor wrote back, Exhibit 9, telling Petitioner she had no right of appeal. She also said a notice had been mailed 12-22-00 and that objection at the 1-15-01 meeting was necessary to appeal to the tax tribunal.

On 1-4-02 Petitioner wrote back, Exhibit 10, stating she had never received the 12-22-00 notice from Hamburg Township, and advised her of her change of address made 4-20-00, when she met with the township Supervisor.

On 1-9-02 the Assessor mailed a letter to Petitioner, Exhibit 11, attaching information she received from the utilities coordinator who had been responsible for mailing the notices. The 1-3-02 letter from the utilities coordinator to the Assessor, Exhibit 12, indicated that the appeal time had lapsed. A 1-8-02 letter from the utilities coordinator to the Assessor, Exhibit 13, falsely indicated that the utilities coordinator had mailed the 12-22-00 notice to Petitioner at 9715 Daisy Lane, Dexter, MI 48130. The utilities coordinator later admitted in her affidavit, Exhibit 2, that she had mailed all notices to the wrong address, 11505 Dunlavy Lane.

On 1-21-02 Petitioner received a letter from one of her tenants, Exhibit 14, indicating that he had received the notice of the 2nd Public Hearing in his mailbox at 11505 Dunlavy Lane.

On 2-4-02 Petitioner obtained an Audit File Report, Exhibit 15, from the assessing department indicating the original change of address was made 5-22-00, after the initial meeting with the Supervisor, but before the 1st and 2nd Public Hearing notices were mailed. This proved that the correct address for Petitioner was on file at the time the notices for the 1st and 2nd Public Hearings were mailed to the wrong address for Petitioner.

Petitioner filed an appeal with the Board of Review appealing the special assessment. On March 11, 2002 she met with the Board of Review. All three members agreed the sewer special assessment should be the same for the four people living at her property as for everybody else. However, since this was not an ad valorem tax matter, they said they could not help. They encouraged her to pursue this matter with the Michigan Tax Tribunal, telling Petitioner that she had done the right thing by coming to them, and instructing her to file an appeal within 30 days of receiving their denial letter.

On 4-12-02 Petitioner received her denial letter, and on 5-09-02 mailed her Petition to the Michigan Tax Tribunal. The Tax Tribunal, rejecting Petitioner's constitutional due process and lack of notice challenge covered in paragraphs 10-27 of her Petition, dismissed her appeal on 5-31-02 with its Sua Sponte Order of Dismissal, saying the appeal was untimely filed and they had no subject matter jurisdiction. Petitioner filed a Motion for Reconsideration on 6-14-02. The Tax Tribunal issued an order denying her Motion for Reconsideration on 8-30-02. Petitioner filed a Motion for Relief from Orders on 9-18-02. Petitioner then filed an appeal with the Court of Appeals on 9-19-02 and cited her due process and equal protection challenges on page 10, 36,

and throughout the entire first section, pages 8-28. The Court of Appeals misstated that challenge "in support of her argument, petitioner relies on MCL 211.741 et seq., and MCL 41.721 et seq., and several Michigan cases..." and affirmed the original Michigan Tax Tribunal 5-31-02 order of dismissal for lack of subject matter jurisdiction on 4-13-04. The Michigan Supreme Court denied leave to appeal on October 25, 2004. The federal questions were raised on pages 1-8,10,16,17,19,22,25, in her application for leave to appeal.

REASONS FOR GRANTING THE PETITION
I.

Rita Ferguson, titleholder to a parcel of real property improved with a 2328 square foot four unit apartment building occupied by four tenants, commenced this action in the Michigan Tax Tribunal 1) claiming the township had violated her due process civil rights and was liable for damages, and 2) requesting that the tribunal quiet title against the Township of Hamburg which was claiming a disproportionate triple sewer special assessment lien against her property.

For more than a century the central meaning of procedural due process has been clear. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552.

The question before us is whether failure to notify the owner of the special assessment proceedings resulted in the deprivation of the owner's property without due process of law so as to render the subsequent special assessment lien against her property constitutionally invalid.

It will be argued that a special assessment lien entered by the township against the owner's property, (acting under color of mandated state law, MCLA 41.721 et seq and MCLA 211.741 et seq), without hearing the owner at two public hearings prior to entry of the special assessment lien, is not a constitutionally valid determination of her rights, and as such that special assessment lien should be set aside. This is so because the township mailed the required notices of the two statutory hearings to the wrong address, and until proper notice was given, the township was without jurisdiction to

proceed to a special assessment lien against the owner's property, whatever its authority may be over the subject–matter.

Notice, of the 1st and 2nd public hearings, says to the owner… appear and you shall be heard. Its purpose is to apprise the owner of, and permit adequate preparation for, an impending hearing. Proper notice is for the purpose of affording the owner an opportunity to appear and defend his or her property…to be heard upon the inclusion or exclusion of her property into the special assessment district, at the 1st public hearing… and the amount of any special assessment, if the owner's property is to be included, at the 2nd public hearing. Proper notice is a summons to appear and speak, if the owner has anything to say, why the special assessment sought against the owner's property should not be rendered.

The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Coe v. Armour Fertilizer Works,* 237 U.S. 413, 424. It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing.

It is an undisputed fact that the township mailed both mandatory hearing notices to the wrong address. In her affidavit the township utilities coordinator admits that she used the wrong address for mailing the notices of both the 1st and 2nd public hearings. It is also an undisputed fact that the owner had changed her address and the township had the correct address on file prior to the notices of the 1st and 2nd hearings being mailed. The audit file report proves this fact. The owner did not receive either of the notices mailed to the wrong address, and so did not attend either the 1st or 2nd public hearing.

When the owner did not appear to defend her property at the 1st public hearing, the township, in effect, entered a default judgment and included the property in the special assessment district. And when the owner did not appear at the 2nd public hearing, the township then entered what amounts to another default judgment as to the amount of the special assessment. The township twice made predeprivation determinations without a prior hearing.

It was not within the power of the jurisdiction of the township to proceed with the special assessment, so as to affect the rights of the owner, where proper notices of hearings were not given. **"For jurisdiction is the right to hear and determine, not to determine without hearing,"** ***Windsor v McVeigh,*** **93 U.S. 274, 284.** There could be no hearing of the owner or any opportunity of the owner being heard, where notices of hearings were not given to the owner at her correct address. The township could not thereafter proceed to exercise jurisdiction. Because the township did in fact proceed without jurisdiction, its determinations do not affect the rights of the owner.

Furthermore, its determinations are not only jurisdictionally invalid, they are constitutionally invalid. Any township determination depriving the owner of property made without jurisdiction was also a deprivation of property without procedural due process safeguards. Because the township determination of inclusion of the owner's property into the special assessment district at the 1st public hearing was made without a prior hearing it was constitutionally invalid. The township's subsequent determination of the amount of the special assessment lien against her property must also be constitutionally invalid, where the inclusion of the property itself is constitutionally invalid.

The township deprived the owner of her property without due process of law and without jurisdiction where the inclusion of the property in the special assessment district and the subsequent lien against that property were determined without prior notice and prior opportunity to be

heard. Such determinations were a denial of her property rights and a denial of her civil rights.

Failure to give the owner notice of the special assessment proceedings violated the most rudimentary demands of due process of law. "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, at 313. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Id. at 314.

The Michigan Court of Appeals erred on constitutional grounds in affirming the Michigan Tax Tribunal Sua Sponte Order of Dismissal. It erred because in doing so it implies to the township a right to deny notices of the 2 hearings, thereby denying the owner any chance to defend against the inclusion of her property in the special assessment district or to defend against the amount of the special assessment. The effect is to convert the township into an instrument of wrong and oppression. The township has in effect awarded the owner's property to itself by denying any opportunity for the owner to be heard or to defend. What plainer illustration could there be of taking property of one and giving it to another without notice or hearing, without due process of law? **The township has no legitimate power to violate the fundamental constitutional safeguards securing property, and the Court of Appeals may not grant it such a power.**

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of property. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to

minimize substantively unfair or mistaken deprivations of property. The deprivations here were both mistaken and unfair in fact. The owner's building was too far away, (550 feet), from the sewer line to be included in the special assessment district under state and county law, MCLA 333.12751(c), defining as 200 feet the proximity of an "available sewer". And following the mistaken inclusion, the amount,$38,073.49, of the special assessment against the property was unfairly disproportional to the increase in value of the owner's property under the 2.6 times standard established by the Michigan Supreme Court in *Dixon Rd. Group v. Novi,* 426 Mich 390 ("This Court will intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land …approximately 2.6 times …for that reason we hold the special assessment invalid.") The cost to the owner of the special assessment would be 7.05 times, not 2.6 times, the increase in value of the owner's property. In *Morton Salt Co. v. City of South Hutchinson,* 159 F2d 897, 901, the Tenth Circuit Court of Appeals wrote,

"If the tax imposed clearly results in such a flagrant and palpable inequality between the burden imposed and the benefit received that it amounts to an arbitrary taking of property without compensation, it is said to violate the due process guaranty under the Fourteenth Amendment. All of the cases which have affirmed the broad powers of taxation have recognized these limitations, i.e., see *Dane v. Jackson,* 256 U.S. 589; *Henderson Bridge Co. v. Henderson City,* 173 U.S. 592, 614; *Houck v. Little River Dist.,* 239 U.S. 254, Cooley, Taxation (4th ed), Sec. 144."

And in *Norwood v. Baker,* 172 U.S. 269, 278-279, this Court wrote,

"There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen's right of property…the principle underlying special assessments to meet the cost of

public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement...the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking under the guise of taxation, of private property for public use without compensation."

The requirement of notice and opportunity to be heard raises no impenetrable barrier to the taking of a person's property. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determinations of facts decisive of rights....and no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Fuentes v. Shevin,* 407 U.S. 67, 80-81, quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S.123, 170-172.

If the right to notice and hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, it is possible that an individual's property can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. Under 42 U.S.C. Section 1983, which establishes a substantive right and civil cause of action for deprivation of one's civil rights, including the right to procedural due process guaranteed under the Fourteenth Amendment, the owner in this case is entitled to damages.

However that possibility, of an owner's property being returned and damages being awarded, is not a certainty. The owner here has been denied any return of her property or damages through a postdeprivation hearing…by the Michigan Tax Tribunal order of dismissal, and later by the Michigan Court of Appeals refusal to set aside that order.

The first notification received by the owner of the mistaken inclusion and the unfairly disproportionate special assessment arrived from the township ten months after the statute of limitations expired. Only after the appeal period had passed did the township suddenly find the correct address for the owner. The owner the following day objected to the township, refused to pay the special assessment, began an administrative appeal, and her own investigation. The mortgage holder, four business days afterward, automatically paid the year end tax bill, unaware that the year end tax bill included a charge for the special assessment.

It is erroneous for the Michigan Court of Appeals to use this payment to justify its denial of the owner's postdeprivation hearing on the merits. First, in doing so it afforded the bill a legitimacy which it does not have. Any sum demanded, as to the special assessment, was constitutionally invalid where the inclusion of the property itself was constitutionally invalid. Second, it was not a voluntary, consensual fully informed payment of the special assessment by someone who had gone through the entire assessment proceedings. The owner was entirely excluded from the 1st and 2nd public hearing assessment proceedings as a result of the wrongful action of the township which deprived her of notice. Third, a township bill is rightly presumed to be valid until proven otherwise, but that proof takes more than five days to acquire. The payment was mistaken because it was based upon the presumption that the township government officials had acted fairly and according to the law, not in violation of the law as the owner's investigation would later determine.

When questioned, the mortgage holder pointed out that they also had not received any notices of the special assessment, that the year end tax bill did not clearly state that the charge was for a special assessment, that the mortgage holder automatically pays all year end tax bills, presuming they are valid, and that the mortgage holder does not have the manpower to individually sort through and question the validity of the tens of thousands of year end tax bills that it pays. A mistaken payment by a mortgage holder, as here, is not acquiescence or voluntary, fully informed, consensual agreement by the owner that a special assessment debt is valid. Mrs. Ferguson has not entered into a sewer contract. Nor would she. She made that clear to the township the day after receiving the amortization bill. Furthermore, since there is no written authorization in the mortgage contract, the mortgage holder was without authority to bind Mrs. Ferguson to a twenty year sewer contract, or to convey any interest in her land. Such would be void under the statute of frauds. The township doesn't look to the mortgage holder to sign a sewer right of way easement grant; it looks to the titleholder, who alone has that authority. Nor should it look to the mortgage holder for authority to bind the titleholder's property to a twenty year sewer lien, the titleholder alone has that authority.

The owner initially filed a written appeal with the township board and township treasurer, and later filed an additional written appeal with the Michigan Tax Tribunal. Upon a motion for reconsideration, the Michigan Tax Tribunal tolled the statute of limitations for an additional 30 days from the time of first notification. However, it ignored the fraudulent concealment of the right of appeal by the township officials during this period, MCLA 600.5855, which would have extended the statute of limitations for two years. During this 30 day tolled period, the township Supervisor, utility coordinator, and Treasurer all affirmatively mislead and hindered the acquisition of information disclosing the right of appeal to the Michigan Tax Tribunal by orally and in writing

repeatedly telling the owner the exact opposite, that she had no right of appeal. In reliance, the owner mailed her written appeal to the Township Board and the Treasurer within the 30 days, instead of to the Michigan Tax Tribunal.

On appeal, the Michigan Court of Appeals refused to set aside the Michigan Tax Tribunal dismissal of owner's petition, thereby denying the owner any opportunity for a postdeprivation hearing on the merits, and the return of her property. The Court of Appeals argued twofold: the owner had no right of appeal because it was too late to appeal. That in effect rubber stamps the township notice violations and rewards the wrongdoing of the township which waited until ten months after the statute of limitations expired to first inform the owner of the inclusion of her property and the amount of the special assessment.

The Court of Appeals secondly argued that under the elaborate procedural guidelines of the state statute designed to protect the rights of the landowners, the mistaken payment by the mortgage holder, just five business days after the owner first received notification of the special assessment, would prevent the invalidation of the lien. That erroneously assumes the special assessment bill is valid and that the inclusion of the property was valid. That payment language is being misinterpreted in the instant case. The inclusion of the property was constitutionally invalid and any amount of a special assessment is likewise invalid. Due process notice defects nullified the townships jurisdiction to make the assessment. An assessment procedure carried out by a township which has no jurisdiction to make the assessment is void. In such a case payment estoppel or waiver cannot be claimed by the Court of Appeals . And by so arguing, the Michigan Court of Appeals ignores that federal due process law preempts state procedural law. The answer to what process is due isn't to be found in the Michigan statute. For the right to due process "is conferred not by legislative grace, but by constitutional guarantee." *Arnett v. Kennedy,* 416 U.S. 134, at 167.

Each Supreme Court due process case has recognized, either explicitly or implicitly, that because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Vitek v. Jones,* 445 U.S. 480, 491; *Arnett v. Kennedy*, supra U.S. at 166-167, at 211. Indeed, any other conclusion would allow the State to destroy at will virtually any state-created property interest, as the township and the Michigan Court of Appeals are in effect trying to do here. This Court has considered and rejected such an approach: "While the legislature may elect not to confer a property interest, …it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards…[T]he adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms." *Vitek v. Jones,* supra, at 490-491, n. 6, quoting *Arnett v. Kennedy,* supra, at 167.

The due process right to a meaningful opportunity to be heard is protected against denial by particular state procedural law that operates to jeopardize it. It is an unjustifiable interference with the owner's right to due process for the Michigan Court of Appeals to close the courts to the owner on the grounds of its own procedures it believes are adequate for taking adverse action. No township should be allowed to violate the notice rights and due process rights of its citizens, and then have their violations of the law condoned by a misapplied payment statute which relieves them of any wrongdoing.

A rule or language in a statute may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right. This Court has often held that an otherwise valid statute was unconstitutionally applied in particular circumstances. And this Court traditionally has held that the Due Process Clauses protect civil litigants who seek redress as defendants hoping to protect their property. Similarly, the

Fourteenth Amendment's Due Process Clause has been interpreted as preventing States from denying potential litigants use of established adjudicatory procedures, when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed rights.

Obviously it was chronological impossible to timely file for a postdeprivation hearing with the Michigan Tax Tribunal under state law, where the owner received the first notification from the township ten months after the limitations period had expired. This late filing resulted from neither the owner's own conduct, nor by circumstances within her control. She had given her correct change of address to the township Supervisor. It was on file, as the audit file report shows, prior to the mandatory written notices of the two public hearings being mailed by the township. Yet, as the utility coordinator affidavit establishes, both public hearing notices were mailed to the wrong address.

This occurred because the township Supervisor carried out his threat to force the owner's property into the special assessment district. This threat was made during a heated debate about whether the property was or was not more than 400 feet away from the proposed sewer line. He was able to accomplish this with a few computer keystrokes. He concealed the change of address by entering the change of address on the wrong assessment roll. This amounts to fraudulent concealment. We know it was the Supervisor who did this because under MCLA 41.724a(3), the township Supervisor was solely responsible for immediately entering the change of address on the assessment roll to be used for the mailing of special assessment notices. Thereafter all mandatory notices went to the wrong address for the owner. The owner had a right to rely upon the Supervisor's performance of his statutory duty to change the address on the correct roll. The owner never received these notices, and never appeared at the hearings to be heard and to defend her property. This lack of notice violated her right to due process.

The purpose of rule of law is to protect basic individual rights by requiring government to act in accordance with pre-announced, clear, and general rules that are enforced by impartial courts in accordance with fair procedures. The rule of law requires the township to act in accordance with the law. This means two things. First, the township must obey the law. The second is that the township cannot exercise power over anyone unless the law permits it to do so. This means that there must be a law authorizing everything the township does. If it acts without legal authority it is acting lawlessly. Since there is no law authorizing the township to withhold the owner's correct address from the assessment roll used for mailing special assessment notices, it was acting without legal authority and it was therefore acting lawlessly. The township did not obey the existing law MCLA 41.724a(3) when the township did not immediately enter the change of address on the correct assessment roll. Because the township broke the law and acted lawlessly, the special assessment is an illegal special assessment. It is illegal because thereafter all mandatory notices went to the wrong address. And as a result the owner did not appear to defend so that the special assessment was illegally assessed. Without notice, the township acted without jurisdiction. It made determinations illegally when it had no jurisdiction. The final result of this domino effect is that the owner was illegally deprived of her property without prior notice and opportunity to defend.

An illegal special assessment stemming from the illegal lawless actions of the township must be set aside. An owner must not be deprived of due process protected significant property interests where a township official, acting under color of state law relating to special assessments, for reasons beyond the owner's control, fails to comply with a statutorily mandated procedure and no post deprivation remedy is available.

Due process requires that notice and hearing must be granted when the deprivation can be prevented, which is

before the deprivation. In *Zinermon v Burch,* 494 U.S. 113, 132 this Court expressly held that "in situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so, regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking." (In Michigan, township officials and employees are granted governmental immunity, so no tort remedy is available under Michigan law.)

The extremely short 30 day appeal period highlights the need for full and accurate and timely written notices of predeprivation hearings on the part of the township. It is certainly unreasonable that the township does not send out the notices return receipt requested, which could be done at a very small expense.

As a matter of constitutional principle, and as this case aptly illustrates, there is no replacement for the right to a prior hearing to assure accurate decision making, it is the only truly effective safeguard against arbitrary deprivation of property. Because a post deprivation hearing that could restore property or award damages may be denied, this case underscores the absolute necessity and importance of due process, and demonstrates why it is equally fundamental that the opportunity to be heard must be "an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* supra 552.

The property owner has been denied all predeprivation hearings, and denied any post deprivation hearing relief under color of Michigan law. There seems to be no similar federal Supreme Court case of record. Under Michigan law, because of the township notice errors, no postdeprivation relief was available. The first township written notification of the special assessment occurred ten months after the statute of limitations expired, making it impossible for the owner to ever satisfy the 30 day statute of limitations. **Unquestionably the owner's federal due process rights are violated where the township's notice errors deny any predeprivation hearing and afterwards extinguish any postdeprivation**

hearing. The Fourteenth Amendment requires "an opportunity …granted at a meaningful time and in a meaningful manner…for a hearing appropriate to the nature of the case," *Boddie v. Connecticut,* 401 U.S. 371, 378. Here the owner was denied such an opportunity.

The principles of constitutional law involved in this case are longstanding. The right to a prior hearing has been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Trust Co,* supra 313, and depending upon the importance of the interest involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut,* supra. *371, 378*, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. It is such an opportunity that the owner was denied. See *Bell v Burson,* 402 U. S. 535, 542; *Wisconsin v. Constantineau,* 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo,* supra., at 551; *Mullane v. Hanover Central Hanover Trust Co.,* supra, at 313; *Opp Cotton Mills v. Administrator,* 312 U.S. 126, 152-152; *United States v. Illinois R. Co.*, 291 U.S. 457, 463; *Londoner v. City & County of Denver,* 210 U.S. 373, 385-386; *In re Ruffalo,* 390 U.S. 544, 550-551. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest…" *Boddie v Connecticut,supra,* at 378-379.

The right to a prior hearing, of course, attaches only to the deprivation of an interest encompassed within the Fourteenth Amendment's protection. The Due Process Clause provides that certain substantive rights-life, liberty, and property-cannot be deprived except pursuant to constitutionally adequate procedures. In determining whether any procedural protection is required, the Court considers "whether the

nature of the interest is one within the contemplation of the "liberty or property" language of the Fourteenth Amendment." *Morrissey v. Brewer,* 408 U.S. 471. The question whether the Due Process Clause applies here can be readily answered. In *Longyear v. Toolan,* 209 U.S. 414, and other tax cases it was unquestioned that the owner of real property is entitled to claim protection of the Due Process Clause in respect to the assessment and collection of taxes. *Kelly v. Pittsburgh,* 104 U.S. 78, 80; *Hibben v. Smith,* 191 U.S. 310, 325; *Central of Georgia R Co. v. Wright, 207 U.S. 127, 138; Londoner v. Denver,* supra, 385; *Turner v. Wade,* 254 U.S. 64, 67-68; *McGregor v. Hogan,* 263 U.S. 234, 237. The "actual owner***of real estate, chattels or money" has "property interests protected by procedural due process." The Fourteenth Amendment's protection of "property" however has never been interpreted to safeguard only the rights of real estate ownership. Rather, it has been read broadly to extend protection to "any significant property interest," *Boddie v. Connecticut,* supra, at 379, including statutory entitlements. See *Bell v. Burson,* supra, at 539; *Goldberg v. Kelly,* supra at 262.

It is clear that the owner, as legal titleholder to the property, had a significant interest in property that was within the protection of the Fourteenth Amendment. Because that was so, the owner could not be deprived of her property interest without due process. See *Memphis Light, Gas, & Water Div. v. Craft,* 436 U.S. 1, 11-12; *Goss v. Lopez,* 419 U.S. 565, 573-574.

The Michigan Tax Tribunal rejected the owner's federal due process question first raised in her initial petition, and summarily dismissed her petition. The Michigan Court of Appeals affirmed, notwithstanding the owner's contention of deprivation of her property rights and her civil rights without due process of law as a result of entry of the special assessment lien without notice and hearing. The Michigan Supreme Court denied leave to appeal.

The owner requests a finding that the township failure to notify the owner of the special assessment proceedings resulted in the deprivation of her property without due process of law, and deprivation of her civil rights, and that the special assessment lien against her property is constitutionally invalid.

The owner requests a reversal and entry of an order setting aside the sewer special assessment lien, quieting title in Rita Ferguson, subject to the mortgage holder's interest, a refund of $3,740.75 with interest, costs, and legal expenses, damages for the violation of her civil rights, and any other relief the Court may deem appropriate.

The owner further requests a holding from the United States Supreme Court that the Due Process Clause requires that owners of a significant interest in property be given written notice and an opportunity for a meaningful and timely hearing at which they may contest a township's claim that it may include their property in a sewer special assessment district; and, that the Due Process Clause requires that owners of a significant interest in property be given written notice and an opportunity for a meaningful and timely hearing at which they may contest the amount of a sewer special assessment.

II.

The question is whether the owner had plausible defenses to both the inclusion of the owner's property and the amount of the special assessment, and among those defenses do any show a violation of the Equal Protection Clause.

Some opportunity for the owner to present her side of the issue at the 1st public hearing would have been of obvious value in reaching an accurate decision as to whether her property should or should not be included in the special assessment district. The only meaningful opportunity to invoke the discretion of the decision-maker is likely to be before the termination takes effect. The owner had plausible arguments why her property should not be included in the special assessment district.

State statute, MCLA 333.12751(c) defines "available public sanitary sewer system" as

"(c) "Available public sanitary sewer system" means a public sanitary sewer system located in a right of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates."

The owner's structure is too far away. It is 550 feet away from the sewer, 350 feet beyond the 200 foot limit set by statute. The Livingston County Sanitary Code also defines "available public sanitary sewer system" as a sewer "passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates." These 200 foot limits have been upheld by the Michigan Court of Appeals where townships have attempted to force properties that are too far away to hook up to township sewer systems. *Bingham Farms v. Ferris,* 148 Mich App 212; *Charter Township of Clayton v. Mobile Home Manor Associates,* 163 Mich App 69, ("Since no mobile home pad in the instant case sat within two hundred feet of plaintiff's system, plaintiff could not force defendants to connect.").

The owner's property is not within the 200 foot limit of MCLA 333.12751 et seq. and therefore is not **benefited by the sewer.** The only justification for a special assessment is that those assessed are receiving special benefits and should pay for them. The natural corollary of this principle is that those who are not specially benefited should not be charged. Nothing has been given for the $38,073.79 which the township has tried to exact from the owner. There is no actual benefit to the owner's land where the sewer is not an available sewer as defined by law, whether it is the 200 feet defined by state law, the 200 feet defined by County code, or the 400 feet the township seeks to impose. The owner's property is too far away.

The neighboring Hahn property, 11335 Dunlavy Lane, abuts the sewer line. Tax records confirm this property was excluded from the special assessment district. It is an undisputed fact, that the Hahn's, and other neighborhood property owners whose properties were too far away, according to the Supervisor, were allowed to exclude their properties by attending the 1st public hearing and objecting that their properties were too far away from the proposed sewer line. **In other words, if the township had properly given the owner notice, she could have appeared at the 1st public hearing and objected, and had her property excluded**.

The inclusion of the owner's property is a violation of the Equal Protection Clause of the Fourteenth Amendment. "This Court still has an obligation to view the classificatory *system*, in an effort to determine whether the disparate treatment accorded the affected classes is arbitrary." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 441. It is arbitrary for the township to include the owner's property which is too far away, but to exclude the property of others which are too far away. The township and the Michigan Tax Tribunal and the Michigan Court of Appeals effectively divide owners of property that are too far away into two discrete groups that are accorded radically disparate treatment. Property owners whose properties are too far away and who are given proper notice of the 1st public hearing are given full consideration on the merits. In contrast, property owners, like the owner, with properties that are too far away, who are not given proper notices of the 1st public hearing, are summarily included. Each claimant stands on the same footing. Their properties are too far away. Yet certain randomly selected claims, because their owners were not properly given notice of the hearing, are irrevocably included in the special assessment district without review. In other words the State, through its township, Michigan Tax Tribunal and Court of Appeals, converts similarly situated claims into dissimilarly situated ones, and then use this distinction as the

basis for classification. This is the very essence of arbitrary state action. It is unfair and irrational to punish property owners, with property too far away, for the township's failure to give them notices of the 1st public hearing. "The Equal Protection Clause 'imposes a requirement of some rationality in the nature of the class singled out,'" *James v. Strange*, 407 U.S. 128, 140 quoting *Rinaldi v. Yeager,* 384 U.S.305, at 308-309. That rationality is absent here. Giving preference to a discrete class "merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause..." *Reed v. Reed,* 404 U.S. 71, 76.

The owner also had plausible arguments against the amount of the special assessment. **The disproportionality in the amount of the special assessment in the instant case can be demonstrated mathematically**. In *Dixon,* supra, the special assessment allocated cost of $13,236.81 per acre for the Novi property divided by the assessor's estimate of an increase of value of $5,000 per acre is 2.64. The special assessment of $38,769.11 per acre for the Dixon property divided by the assessor's estimate of increase of value of $15,000 per acre is 2.58. The *Dixon* court ruled that was a substantial and unreasonable disproportionality between the amount assessed and the value which accrues to the land.

Here is the arithmetic methodology used by Judge Stimpson, the author of the instant Sua Sponte Order of Dismissal, in *Eleanor Rechsteiner v. Twp. Of Blumfield,* 10 MTT 894, at 897,

"The subject property...with a 1997 state equalized value (SEV) of $21,142.00, reflecting a true cash value of $42,284.00. The 1998 assessed value is $22,161.00, a $1,019.00 increase over 1997, reflecting a $2,038.00 increase in TCV or 4.82%. The special assessment of $7,500.00 represents 17.74% of the 1997 TCV of the property or 3.68 times larger than the increase realized in TCV between 1997 and 1998. The Tribunal finds the cost of improvements exceeded the increase in value derived by substantially more

than the 2.6 times the Court found to be disproportional is *Dixon,* supra."

Here is the parallel arithmetic calculation for the owner's property presented to both the Michigan Tax Tribunal and the Michigan Court of Appeals.

The subject property with a 2001 state equalized value (SEV) of $111,800.00, reflecting a true cash value of $223,600.00. The 2002 assessed value is $114,500.00, a $2,700.00 increase over 2001, reflecting a $5,400.00 increase in TCV or 2.42%. The special assessment of $38,073.79 represents 17.03% of the 2001 TCV of the property or 7.05 times larger than the increase realized in TCV between 2001 and 2002. The cost of improvements exceeded the increase in value derived by substantially more than the 2.6 times the Court found to be disproportional in *Dixon,* supra.

There is no reasonable relationship between the amount of the special assessment and the amount of the benefit as measured by the increase in market value, which was determined by the townships own Assessor. Petitioner has not received a $38,073.79 increase in market value. The cost, 7.05 the increase in market value, is nearly triple what the Michigan Supreme Court found to be a substantial and unreasonable disproportionality. It is so because **it results from a township classification system that is unreasonable, discriminatory, and arbitrary.**

It is arbitrary and discriminatory for the township to charge four adults living as a family on one side of the street $12,700 for sewage removal, but to charge four adults living as tenants on the other side of the street $38,073.79, for arguably the same amount of commodity sewage removal. It divides groups of people producing equal amounts of sewage into two discrete groups that are then given radically different special assessments. There is not a real and substantial difference or distinction. And the charge is an additional $25,373.79 the township unfairly and

unreasonably would receive for the same amount of commodity sewage removal. The township is unjustly enriching itself by its arbitrary and irrational classification system.

Under the township scheme the township only charges $12,700 if there are eight or even twelve people in the family. That discrimination means that a family of twelve is charged $12,700 while four tenants are charged $38,073.79, three times as much for arguably one third the amount of sewage removal. The Equal Protection Clause imposes a requirement of rationality. The rationality here is not apparent. The $38,073.79 amount of the triple special assessment to provide sewage removal for four people is so grossly disproportionate to the alleged benefit conferred on the property that it must be viewed as not only an arbitrary taking, but a denial of the Equal Protection Clause of the Fourteenth Amendment.

This township operates a multimillion dollar commodity sewage disposal system unlike any other major municipality without meters. It therefore does not base either its monthly usage charges or its special assessments on actual usage, but on guesswork. In the owner's case **that guesswork has led to a grossly disproportional special assessment that should be set aside.**

Using the *Dixon* and Michigan Tax Tribunal methodology, a $12,700 sewer special assessment divided by the owner's $5,400 increase in market value would be 2.35 times, less than the 2.6 times found disproportional in *Dixon*. So, mathematically if there was no unreasonable arbitrary discrimination, and the owner had been assessed the same as everyone else, there would have been no disproportionality.

The Equal Protection Clause should require the township to install meters, and base its monthly charges and special assessments fairly on actual meter readings of the amount of sewage being discharged by each building into the sewage system. That would prevent unreasonable and discriminatory disproportionality of special assessments and monthly usage

charges, and the extreme financial hardship which such disproportionality causes to those unfairly assessed and overcharged.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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(734) 426-5905
Pro Se

APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

RITA C. FERGUSON,

Petitioner-Appellant,

V

TOWNSHIP OF HAMBURG,

Respondent-Appellee.

UNPUBLISHED
April 13, 2004

No. *243852*
Michigan Tax Tribunal
LC No. 00-290495

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's dismissal, for lack of subject matter jurisdiction, of her appeal from a special assessment that respondent township levied against her property for a sanitary sewer project. We affirm.

Petitioner argues that the special assessment is invalid because she did not receive written notice of the two public hearings before approval of the special assessment roll and that the special assessment was disproportional to the benefit conferred to her property. We conclude that petitioner is entitled to no relief.

In the absence of fraud, review of Tax Tribunal decisions is limited to determining whether the tribunal committed an error of law or adopted a wrong principle. *Danse Corp v City of Madison Heights,* 466 Mich 175, 178; 644 NW2d 721 (2002). The tribunal's factual findings will not be disturbed if they are supported by competent, material, and substantial evidence on the whole record. *Id.* Substantial evidence is that which a reasonable mind would accept as

adequate to support a decision. *Dignan v Michigan Public School Employees Retirement Bd,* 253 Mich App 571, 576; *659* NW2d 629 (2002).

Petitioner asserts that the Tax Tribunal erred in dismissing her case where the township failed to provide to her mandatory notices of the two public hearings concerning the special assessment because such is a jurisdictional defect that voids the special assessment and all subsequent proceedings. In support of her argument, petitioner relies on MCL 211.741 *et seq.,* and MCL 41.721 *et seq.,* and several Michigan cases, most of which precede the enactment of the statutory provisions governing here or that deal with other statutes.

The jurisdiction of the Tax Tribunal is conferred by the Legislature through statute. MCL 205.731; *Nicholson v Birmingham Bd of Review,* 191 Mich App 237, 239; 477 NW2d 492(1991). The tribunal does not have jurisdiction to consider petitions that are not timely filed. Electronic Data Systems Corp v Flint Twp, 253 Mich App 538, 544; 656 NW2d 215 (2002).
In relevant part, MCL 205.735 provides:

(1) A proceeding before the tribunal is original and independent and is considered de
novo. ... For a special assessment dispute, the special assessment must be protested at
the hearing held for the purpose of confirming the special assessment roll before the
tribunal acquires jurisdiction of the dispute.

(2) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in
interest, as petitioner, filing a written petition on or before June 30 of the tax year
involved. ... In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing

a written petition within 30 days after the final decision,ruling, determination, or order that the petitioner seeks to review .... [Emphasis supplied.]

The tribunal commits no legal error when applying the clear and unambiguous language of a statute. Electronic Data Systems Corp. supra at 545. Special assessments are subject to the thirty-day rule of MCL 205.735(2). Anderson v Selma Twp, 95 Mich App 112, 116; 290 NW2d 97 (1980).

Although petitioner asserts that the township did not fulfill the jurisdictional requirements of MCL 205.735 because respondent mailed the notice to her former address and that MCL 41.724a(5) and MCL 211.744 invalidate assessments against properties where property owners were not given notice as required, our review of these statutes further supports the tribunal's decision to dismiss petitioner's case. In MCL 41.724a(5), the Legislature declared that "A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment." Virtually identical language appears in subsection (6) of that statute as well as in MCL 211.744.

The evidence before the Tax Tribunal at the time of its decision concerning notice included an affidavit from respondent's engineer in which he states that he met with petitioner and her husband and spoke of the public hearing, her ability to object at that hearing, and her subsequent ability to appeal to the Tax Tribunal. Although petitioner submitted an affidavit in which she denied receiving oral notice of the public hearing, she submitted her affidavit after the tribunal made its decision on her motion for reconsideration; therefore, her affidavit was not before the tribunal at the time it decided the issue. Regardless, Petitioner's mortgagee paid the tax bill, including the special

assessment, on December 14, 2001. This payment followed petitioner's meeting with a township employee concerning the sewer assessment charges on her 2001 tax bill. The language of petitioner's mortgage agreement specifically authorizes her mortgagee to pay assessments which may attain priority over the mortgage; because unpaid special assessments are unpaid taxes which eventually lead to foreclosure of the property, petitioner's mortgagee was authorized by petitioner to pay the special assessment. MCL 41.730; MCL 211.78k(5),(6). The evidence presented to the Tax Tribunal before its decision concerning notice is that which a reasonable mind would accept as adequate to support a decision that petitioner had received actual notice and had paid a portion of her assessment; therefore, the TaxTribunal's findings of the same were supported by material, competent, and substantial evidence in the record. Furthermore, according to the clear language of MCL 211.744 and MCL 41.724a, based on either of these findings, the special assessment to petitioner's property is not invalidated because of lack of notice. See Douglas Krepps v Eaton Co, MIT Docket 149552;1995 WL 811639.

Petitioner also asserts that the special assessment was disproportional to the benefit conferred to her property. However, the Tax Tribunal did not address this issue below. Generally, an issue is not properly preserved if it is not raised before and addressed by the administrative tribunal. See Town & Country Dodge v Dep't of Treasury, 420 Mich 226, 228 nl; 362 NW2d 618 (1984); Alford v Pollution Control Inds of America, 222 Mich App 693, 699; 565 NW2d 9 (1997). Furthermore, this Court is limited in its review to the record submitted below. MCR 7.210(A). Because the tribunal dismissed petitioner's case based on lack of subject matter jurisdiction, there is insufficient evidence on the record for this Court to consider this issue.

Affirmed.

APPENDIX B

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL

Rita C. Ferguson,
Petitioner,
v
Township of Hamburg,
Respondent. -

MTT Docket No.290495
Tribunal Judge Presiding
Michael A. Stimpson

SUA SPONTE ORDER OF DISMISSAL

The Tribunal, having given due consideration to the file in the above-captioned case, finds that (i) Petitioner filed her initial petition on May 9, 2002, (ii) the underlying issue relates to the levying of a special assessment by Respondent, (iii) in that regard, Petitioner contends that "[l]ack of notice to Petitioner was injurious and prejudicial, and resulted in denial of justice.. .Petitioner was not afforded the opportunity to be heard or to protest, nor provided the appeal information state statute requires to be included with a notice of special assessment hearing.. .Petitioner's property has been taken without due process of law.. .Petitioner, who was not given notice and so could not appear to protest confirmation of the assessment roll or to appeal is entitled to redress in the courts.. .Respondent mailed notices for lst Public Hearing on Forming Sewer District on 6-23-2000 and 2nd Public Hearing on Assessment for Sewers on 12-22-2000 to an old and inaccurate address for Petitioner through mistake or clerical error.. .Petitioner never received these notices... [d]efects in the assessment proceedings, and defects materially affecting the rights of the Petitioner render void the assessment.[t]he cost of improvements exceed the

increase in value derived by substantially more than 2.6 times which the [Michigan Court of Appeals] found to be disproportionate in [Dixon Road Group v City of Novi, 426 Mich 390 (1986)]," (iv) Petitioner has failed to properly invoke the Tribunal's subject matter jurisdiction as Petitioner failed to file her appeal within 30 days of the issuance of actual notice of the special assessment, as required by MCL 205.735, (v)in that regard, the property's ad valorem tax bill for the 2001 tax year would have provided such notice, (vi) without addressing whether MCL 211 .53a applies to special assessments, the purported error or mistake is not a clerical error or mutual mistake of fact, as provided by International Place Apartments v Ypsilanti Township, 216 Mich App 104,109 (1996), and General Products v Township of Leon,, MTT Docket No. 249550 (March 8, 2001), and (vii) the Tribunal has no authority to waive the statutory requirements governing the filing of such appeals, as provided by the Michigan Court of Appeals in Fox v Board of Regents,375 Mich 238 (1965), therefore,

IT IS ORDERED that this case is DISMISSED.
MICHIGAN TAX TRIBUNAL
Entered: MAY 31 2OO2

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL

Rita C. Ferguson,
Petitioner,
v MTT Docket No. 290495
Township of Hamburg, Tribunal Judge Presiding

Respondent. Michael A.Stimpson

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

On June 14, 2002, Petitioner filed a motion requesting the Tribunal to reconsider the Order entered on May 31, 2002, dismissing the above-captioned case. In support of her Motion, Petitioner contends that (i) "Petitioner did not receive notice of the hearing held for the purpose of confirming the special assessment roll.. .for the reason that Respondent mailed the notice of this meeting to the wrong address for Petitioner," (ii) "Petitioner had changed her address with Respondent prior to the mailing of that required notice, and other required notices.. .Petitioner notified both Respondent's Supervisor and secretary on 4-20-00 of the address change," (iii) "Respondent has acknowledged multiple times and in its own words, that it mailed the notice of the above meeting confirming the special assessment roll and other statutory required notices to the wrong address," (iv) "MCL 205.735 assumes the mailing to the correct address of the actual notice of the hearing held for the purpose of confirming the special assessment roll... [i]t is silent as to what happens if the actual notice is mailed to the wrong address," (v)"Respondent failed in its duty to immediately enter the address change given by Petitioner and continued to mail notices to the wrong address," (vi) 93[Act 162 of 1962] is not silent as is MCL 205.735.. .[i]t does not assume the notices of hearing were given, as does MCL 205 .735.. .[i]t does not say that a tax notice received 12 months later sufficiently provides the notice of appeal to the Tax Tribunal, as the Order implies... [i]t specifically states that any failure to give the appeal notice or the hearing notice shall invalidate the assessment on the property affected... [s]hall invalidate does not mean it may invalidate... [i]t does not give the Tribunal discretion or authority to decide that

lack of notice of either the hearings or the appeal right may be remedied by a tax notice.. .that in and of itself provides no such notices," (vii) "Act 162 does not give any authority to the Tax Tribunal to revive an assessment that was invalid for lackof notice and in effect give it new life by means of a tax notice that carries a nonexistent notice of appeal... [t]he sections of Act 162 are like the Miranda rights of special assessments...[i]f landowners are not notified of special assessment meetings, or of their legislatively protected rights of appearance, protest, and right of appeal to the Tax Tribunal.. .then. . .the whole case is tossed out, the assessment is invalidated... [t]his Tribunal has no authority to modify Respondent's duty to Petitioner to give timely notices to a correct address," (viii) "[t]he Audit File Report is the 'smoking gun' in this case.. .[t]he burden of proof shifts to the Township to prove that they actually informed Petitioner of her legal rights... [t]he Tribunal is trying to create a double notice standard, one for landowners who properly receive notice, but a harsher notice standard for those landowners, like Petitioner, who did not properly receive notice, while at the same time relaxing the notice duty requirements of Act 188 [and] 162 for Townships, like Respondent...[t]his is unfair," (ix)"Act 162 is here the controlling act...[i]t controls over Act 188 and MCL 205.735...[t]his Tribunal is trying to make MCL 205.73 5 the controlling statute in this matter, and it is not," and (x) "[i]f the Tribunal is going to construe a tax bill.., as giving all the notification of legal rights the legislature intended in Acts 188 and 162, then it is only fair to construe that Petitioner's letter of appeal...sent within 30 days of receipt of that tax bill be construed as a timely appeal.. .Petitioner has twice filed appeals in this matter.. .[t]he first time within 30 days of receiving the tax notice mentioned in the Order.. .Petitioner filed a second appeal within 30 days of receiving a denial letter from the Board of Review.. Respondent unequivocallyfailed to inform Petitioner of a renewed 30 day right of appeal... [t]he

Tribunal needs to understand what Petitioner has had to contend with in her dealings with Respondent's agents.. .[t]he Audit File Report was received 2-4-02, long after the Tribunal says a renewed 30 day right of appeal started...[t]he legislative intent of Act 188 and 162, to have Respondent Township affirmatively notify landowner Petitioner of her legal right of appeal to the Tax Tribunal was unfulfilled, in fact, the Supervisor stated exactly the opposite of what the legislature intended, that Petitioner had no right of appeal... [a]n injustice has been committed."

On June 28, 2002, Respondent filed a response in opposition to the Motion contending that (i) "Petitioner did, however receive actual notice of her opportunity to appeal at a public hearing to object to her assessment and of her right to appeal that assessment to the Michigan Tax Tribunal.. .[f]urther, Petitioner also received actual notice of the amount of the assessment that would be placed on her tax bill approximately four weeks before Petitioner paid that bill," (ii) "Respondent's consulting engineer, John Adams, personally visited with Petitioner and her husband, Michael, Petitioner's representative in this appeal, on October 7, 2000 at the subject property and informed her that the district would be created, that there would be a special assessment to pay for the district, that she could object to the amount of her assessment at a public hearing, and that if still not satisfied could appeal the assessment to the Michigan Tax Tribunal," (iii) "[o]December 5, 2001 a letter was sent to each property owner within the subject assessment district which letter included an amortization chart of the property owner's sewer assessment.. .[t]he addresses for the December 5, 2001 mailing came from the tax year 2001 database not the tax year 2000 database... [t]he December 5,2001 letter and amortization chart therefore went to Petitioner's Daisy Lane address," (iv) "Petitioner and her husband met with Ms.

Campbell during the week of December 10, 2001 to discuss the amount of her assessment," (v)"[t]he first assessment for the new district appeared on the 2001 winter tax bill.. .Petitioner's [mortgager] received the tax bill and, pursuant to the terms of the mortgage, paid it on December 31, 2001," (vi) "Petitioner has raised no issue other than those ruled on by this Tribunal, either expressly or by reasonable implication.. Petitioner has not shown any palpable error which would lead to a different disposition," (vii) "[i]f the petitioner in [DouglasKrepps v County of Eaton, MTT Docket No. 149552 (1995)], who had received notice only through his escrow agent, was held to have received notice sufficient for the purposes of MCL 211.744, the notice received by Petitioner here, who received actual notice from Respondent's agent and employee as well as through her escrow agent, must also satisfy that statute's requirements," and (viii) "[i]t is sufficient to say that this Tribunal has no jurisdiction to invalidate the assessment either because of the thirty day requirement of MCL 205.735or because the assessment was paid and therefore Petitioner has run afoul of MCL 211.744."

The Tribunal, having given due consideration to the Motion, the response, and the case file, finds that (i) contrary to Petitioner's contentions, the Tribunal has not rendered any decision relative to the validity of the underlying special assessment, (ii) it does, however, appear that the special assessment may not be invalid under MCL 211.744 as Petitioner apparently paid a portion of the special assessment, (iii) nevertheless, MCL 205.73 5 is not, in fact, silent relative to the failure to receive notice of an assessment, (iv) in that regard, MCL 205.735 provides for the filing of appeals within 30 days of the issuance of actual notice of an assessment increase, (v) more importantly, MCL205.735 controls the filing of such appeals with the Tribunal and not

Act 162 of the Public Acts of 1962, (vi) although the required legal notice was apparently not sent to Petitioner, it appears that Petitioner received actual notice of the special assessment hearing and her right to appeal to the Tribunal, and (vii) as a result, Petitioner has failed to demonstrate any palpable error by which the Tribunal or the parties were misled in the rendering of the Order of May 31, 2002, as Petitioner's initial petition was filed more than 30 days after the issuance of actual notice of the special ass essment, therefore,

it IS ORDERED that Petitioner's Motion for Reconsideration is DENIED. MICHIGAN TAX TRIBUNAL
Entered: AUG 3 0 2002

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND IJDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL

Rita Ferguson, Petitioner, v Township of Hamburg, Respondent.	MTT Docket No. 290495 Tribunal Judge Presiding Michael A. Stimpson

ORDER DENYING PETITIONER' S MOTION TO SET ASIDE RECONSIDERATION DENIAL
ORDER DENYING PETITIONER'S MOTION TO SET ASIDE DISMISSAL
ORDER DENYING PETITIONER'S REGUEST FOR COSTS

On September 16, 2002, Petitioner filed a motion requesting the Tribunal to (i) set aside the Order entered in the above-

captioned case on August 30, 2002, denying Petitioner's Motion for Reconsideration, and (ii) set aside the Order entered on May 31, 2002, dismissing the case. In support of its motions, Petitioner contends that (i)"fraud and misrepresentation were committed by the Respondent.... [consisting] of the filing of a false affidavit and the misrepresentation of material facts which misled the Tax Tribunal as to facts upon which its Orders were based, and by misrepresentations and deception which misled the Petitioner and Petitioner's mortgage holder, and is evidenced by the record and proceedings herein and as appears more fully from the.. affidavits of Rita C. Ferguson and Michael A. Ferguson," (ii) "[w]hile the Tax Tribunal retains control, it has power to vacate its Orders," (iii) "[t]he affidavit of John W. Adams. ..submitted by Respondent with its Brief in Response to Motion for Reconsideration, contains multiple instances of deception of the Tribunal by deliberately misrepresenting facts which, had they been known to the Tribunal, would have induced it to make a different judgment," (iv)"[u]nder the special assessment process, Petitioner was entitled to have input during the making of the assessment…Petitioner was entitled to provide input at both the determination of necessity of improvements stage, and the apportionment of costs stage.[s]ince Petitioner did not receive notice of these meetings, Petitioner was injured.. .Petitioner lost not only her right to appeal, but also her right to attempt to influence the decision as to whether to make the improvements, and how to apportion the costs... [t]his due process notice failure under Act 188 and Act 162 will and should invalidate the special assessment," (v)"[i]f Petitioner had truly been informed by John Adams of her right to appeal to the Tax Tribunal, she would have sent her [December 31, 2001] appeal letter...not to the Assessor, but to the Tax Tribunal," (vi) "John Adams' affidavit is a fraud perpetrated by him and the Respondent to mislead and deceive this Tribunal into thinking there was an oral

notification that gave actual notice of all Petitioner's rights that the Township had a duty to inform Petitioner of in writing under Act 188 and 162...[m]ultiple errors of Respondent are documented in writing, either by Respondent's own records or by written letters sent to Petitioner by Respondent's employees and officials.. .Respondent's employees have lied to Petitioner... [w]hen Petitioner had notified Respondent's Assessor...that she have never received notice of a [January 15, 2001] meeting, and requested where that notice had been sent, Brittany Campbell initially lied about where the Notice had been sent. ..[s]o it was no surprise to see that the John Adams affidavit had Brittany Campbell notarizing his signature.. .[a] liar notarizing a liar... [i]t wasn't even done properly... [t]hese two individuals colluded to deceive this Tribunal... [w]hat happens when people start lying is that they start tripping themselves up... [s]uch as when John Adams, in his affidavit, described Petitioner's two eight-year-old sons as teenagers... [t]he John Adams affidavit is defective, and should be tossed out," (vii) "[t]he address on the assessment roll was forged as well," (viii) "prior to Petitioner's first written notification from Respondent of Petitioner's right to appeal to the Tax Tribunal, which Petitioner received in the denial letter from the Township Board of Review, Respondent had repeatedly misinformed Petitioner in writing through its Assessor on [January 3,2002]. ..and by written letter,[January 3, 2002] from the Utilities Coordinator...that she had no right of appeal to the Tax Tribunal. ..Respondent orally informed Petitioner of the same thing through its Utilities Coordinator on [December 7, 2001] and its Supervisor on[December 21, 2001] that her right of appeal to the Tax Tribunal had expired 30 days after the public hearing of [January 15, 2001], and that presently she had no right of appeal.. .[r]eckless and heedless misrepresentation as to Petitioner's right of appeal to the Tax Tribunal, even if made without intent to deceive, amounted to fraud and is equally culpable... [i]n reliance on

the written and oral statements of Respondent's employees and officials that she had no right of appeal to the Tax Tribunal, Petitioner failed to meet the thirty-day filing deadline... [u]nder these circumstances, the Tribunal should make an exception to the thirty-day jurisdictional requirement.. .and instead toll it from the time she received the denial letter from the Board of Review, which letter was the very first instance of a written notice of a right of appeal," (ix) "Petitioner refused to pay the $3,740.75 on the Tax Bill to Petitioner... [s]he was protesting the special assessment and refusing to pay when her mortgage escrow department paid a bill for this amount to the Township.. .Petitioner did not learn of this payment until she received an escrow notice of shortage at the end of April 2002,94 and (x) "Douglas Krepps v County of Eaton, MTT Docket [No.] 149552. ..[1995)] does not apply because the facts are not the same." Petitioner also requests costs.

On October 2, 2002, Respondent filed a response to the motions. The response was filed more than 14 days after service of the motions and is untimely, as provided by TTR 230. As such, the response was not considered in the rendering of this Order.

The Tribunal, having given due consideration to the Motion and the case file, finds that (i) contrary to Petitioner's contentions, the affidavits referred to in Petitioner's Motion to Set Aside Denial and Motion to Set Aside Dismissal were not provided with the motions, (ii) further, Petitioner's Motion to Set Aside Dismissal was filed more than 21 days after the entry of the Order of May 31, 2002, and is untimely, as provided by TTR 247, (iii) additionally, Petitioner filed a Claim of Appeal with the Michigan Court of Appeals on September 19, 2002, (iv) as such, this case is pending before the Court of Appeals and not the Tribunal, (v) nevertheless, it still appears, based on the documentary evidence submitted,

that Petitioner had actual notice of the hearing held to confirm the special assessment roll and her right to appeal the special assessment to the Tribunal after protesting the special assessment at that hearing, (vi) as such, Petitioner has failed to show good cause to set aside the Order of August 30, 2002, or the Order of May 31, 2002, or demonstrate any palpable error by which the Tribunal or the parties were misled in the rendering of those Orders, and (vii) the denial of the motions renders Petitioner's request for costs moot, as provided by TTR 145, therefore,

IT IS ORDERED that Petitioner's Motion to Set Aside Reconsideration Denial is DENIED.
IT IS FURTHER ORDERED that Petitioner's Motion to Set Aside Dismissal is DENIEID.
IT IS FURTHER ORDERED that Petitioner's Request for Costs is DENIED.
MICHIGAN TAX TRIBUNAL
Entered: NOV 14 2002

MICHIGAN SUPREME COURT
Lansing,Michigan

Order
Entered: October 25, 2004

Maura D. Corrigan, Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

RITA C. FERGUSON,
Petitioner-Appellant,

v

SC: 126215
COA: 243852
MTT: 00-290495

TOWNSHIP OF HAMBURG,
Respondent-Appellee.

On order of the Court, the application for leave to appeal the April 13, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

APPENDIX C

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifth Amendment

...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

PUBLIC IMPROVEMENTS (EXCERPTS)
Act 188 of 1954

41.721a "Record owner" defined.
Sec. 1a.As used in this act, "record owner" means a person, sole proprietorship, partnership, association, firm, corporation, or other legal entity, possessed of the most recent fee title or a land contract vendee's interest in the land as shown by the records of the county register of deeds.

41.724 Plans; cost estimate; resolution; designation of special assessment district; hearing; notice; periodic redeterminations of cost; objections; adding property to special assessment district; supplemental petition; filing by railroad companies; additional notice; affidavit of service.

Sec. 4.(1) Upon receipt of a petition or upon determination of the township board if a petition is not required under section 3, the township board, if it desires to proceed on the improvement, shall cause to be prepared plans describing the improvement and the location of the improvement with an estimate of the cost of the improvement on a fixed or periodic basis, as appropriate. Upon receipt of the plans and estimate, the township board shall order the same to be filed with the township clerk. If the township board desires to proceed with the improvement, the township board shall tentatively declare by resolution its intention to make the improvement and tentatively designate the special assessment district against which the cost of the improvement or a designated part of the improvement is to be assessed.

(2) The township board shall fix a time and place to meet and hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district, and shall cause notice of the hearing to be given as provided in section 4a. The notice shall state that the plans and estimates

are on file with the township clerk for public examination and shall contain a description of the proposed special assessment district. If periodic redeterminations of cost will be necessary without a change in the special assessment district, the notice shall state that such redeterminations may be made without further notice to record owners or parties in interest in the property.

(3) At the hearing, or any adjournment of the hearing which may be without further notice, the township board shall hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district. The township board may revise, correct, amend, or change the plans, estimate of cost, or special assessment district.

(4) Property shall not be added to the district unless notice is given as provided in section 4a, or by personal service upon the record owners of the property in the entire proposed special assessment district, and a hearing afforded to the record owners. If a petition is required because property is added to the special assessment district which makes the original petition insufficient, then a supplemental petition shall be filed containing sufficient additional signatures of record owners. If the nature of the improvement to be made is such that a periodic redetermination of costs will be necessary without a change in the special assessment district boundaries, the township board shall include in its estimate of costs any projected incremental increases. If at any time during the term of the special assessment district an actual incremental cost increase exceeds the estimate therefor by 10% or more, notice shall be given as provided in section 4a and a hearing afforded to the record owners of property to be assessed.

41.724a Notice of hearings in special assessment proceedings.

Sec. 4a.(1) If special assessments are made against property, notice of hearings in the special assessment proceedings shall be given as provided in this section.

(2) Notice of hearings in special assessment proceedings shall be given to each record owner of, or party in interest in, property to be assessed whose name appears upon the last township tax assessment records by first-class mail addressed to the record owner or party in interest at the address shown on the tax records, at least 10 days before the date of the hearing. The last township tax assessment records means the last assessment roll for ad valorem tax purposes that was reviewed by the township board of review, as supplemented by any subsequent changes in the names or the addresses of the owners or parties listed on that roll. If a record owner's name does not appear on the township tax assessment records, then notice shall be given by first-class mail addressed to the record owner at the address shown by the records of the county register of deeds at least 10 days before the date of the hearing. Notice shall also be published twice before the hearing in a newspaper circulating in the township. The first publication shall be at least 10 days before the date of the hearing. If a published notice includes a list of the property identification numbers of the property to be assessed, that list may provide either the individual property identification number for each parcel of property to be assessed or 1 or more sequential sets of property identification numbers, which include each parcel of property to be assessed. If a published notice includes a list of the property identification numbers of the property to be assessed, that published notice shall also include either a map depicting the area of the proposed special assessment district

or a written description of the proposed special assessment district.

(3) If a person whose name and correct address do not appear upon the last township tax assessment records claims an interest in real property, that person shall immediately file his or her name and address with the township supervisor. This filing is effective only for the purpose of establishing a record of the names and addresses of those persons entitled to notice of hearings in special assessment proceedings. The supervisor shall immediately enter on the tax assessment records any changes in the names and addresses of record owners or parties in interest filed with the supervisor and at all times shall keep the tax assessment records current, complete, and available for public inspection.

(4) A township officer required to give notice of a hearing in special assessment proceedings may rely upon the last township tax assessment records in giving notice of the hearing by mail. The method of giving notice by mail as provided in this section is declared to be the method that is reasonably certain to inform those to be assessed of the special assessment proceedings.

(5) Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment,a reassessment against the property may be made.

(6) A special assessment hearing held before June 5, 1974 is validated, insofar as any notice of hearing is concerned, if notice was given by mail to the owners or parties in interest whose names appeared at the time of mailing on the last township tax assessment records. Any such special assessment hearing is validated as to any owner or party in interest who actually received notice of hearing, waived the notice, or paid any part of the special assessment.

41.726 Filing and review of special assessment roll; hearing; notice; adjournments; objections; confirmation, referral, or annulment; endorsement; finality; action contesting assessment.

Sec. 6.(1) When a special assessment roll is reported by the supervisor to the township board, the assessment roll shall be filed in the office of the township clerk. Before confirming the assessment roll, the township board shall appoint a time and place when it will meet, review, and hear any objections to the assessment roll. The township board shall give notice of the hearing and the filing of the assessment roll as required by section 4a.

(2) A hearing under this section may be adjourned from time to time without further notice. A person objecting to the assessment roll shall file the objection in writing with the township clerk before the close of the hearing or within such further time as the township board may grant. After the hearing the township board, at the same or at a subsequent meeting, may confirm the special assessment roll as reported to the township board by the supervisor or as amended or corrected by the township board; may refer the assessment roll back to the supervisor for revision; or may annul it and direct a new roll to be made.

If a special assessment roll is confirmed, the township clerk shall endorse on the assessment roll the date of the confirmation. After the confirmation of the special assessment roll, all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction

41.728 Special assessments to constitute lien; character and effect. Sec. 8.All special assessments contained in any special assessment roll, including any part thereof deferred as to payment, shall from the date of confirmation of such roll, constitute a lien upon the respective parcels of land assessed. Such lien shall be of the same character and effect as the lien created for township taxes and shall include accrued interest and penalties. No judgment or decree or any act of the township board vacating a special assessment shall destroy or impair the lien of the township upon the premises assessed for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon.

41.733 Illegal special assessment; reassessment proceedings.

Sec. 13.Whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the township board shall, whether the improvement has been made or not, whether any part of the assessment has been paid or not, have power to proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original

assessment, and whenever an assessment or any part thereof levied upon any premises has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment.

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978
333.12751 Definitions used in §§ 333.12752 to 333.12758.
Sec. 12751.

As used in sections 12752 to 12758:

c) "Available public sanitary sewer system" means a public sanitary sewer system located in a right of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates.

600.5855 Fraudulent concealment of claim or identity of person liable; discovery.
Sec. 5855.

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations

NOTICE OF SPECIAL ASSESSMENT HEARINGS
Act 162 of 1962

AN ACT to prescribe the method of giving notice of special assessment hearings; to provide for the inclusion of appeal information with a notice of special assessment; to prescribe duties of persons and certain public officials in connection with the keeping and maintaining of tax assessment records; to prescribe the effects of failure to give notice of special assessment hearings; and to validate certain special assessment hearings.

211.741 Notice of hearings in special assessment proceedings; service on owners or parties appearing on last local tax assessment records; statement that appearance and protest at hearing required for appeal; personal appearance; filing appearance or protest by letter; record of parties appearing to protest.

Sec. 1.

(1) For each special assessment made against property, notice of all hearings in the special assessment proceedings shall be given as provided in this act in addition to any notice of hearings to be given by publication or posting as required by statute, charter, or ordinance. The provisions of this act in respect to service of notice by mail shall supersede any existing statutory, charter, or ordinance requirements for mailing notice. Notice of hearings in special assessment proceedings shall be given to each owner of or party in interest in property to be assessed whose name appears upon the last local tax assessment records by mailing by first class mail addressed to that owner or party at the address shown on the tax records at least 10 days before the date of the hearing. The last local tax assessment records means the last assessment roll for ad valorem tax purposes that has been reviewed by the local board of review, as supplemented by any subsequent changes in

the names or the addresses of the owners or parties listed on that roll.
(2) The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal and shall describe the manner in which an appearance and protest shall be made.
(3) An owner or party in interest, or his or her agent may appear in person at the hearing to protest the special assessment, or shall be permitted to file his or her appearance or protest by letter and his or her personal appearance shall not be required.
(4) The governing body shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person.
211.742 Tax assessment records; filing of names; changes of names and addresses.
Sec. 2.
Where any person claims an interest in real property whose name and correct address do not appear upon the last local tax assessment records, he shall be obligated to file immediately his name and address with the local tax assessing officer. This requirement shall be deemed effective only for the purpose of establishing a record of the names and addresses of those persons entitled to notice of hearings in special assessment proceedings. It shall be the duty of each tax assessing officer to immediately enter on the local tax assessment records any changes in the names and addresses of owners or parties in interest filed with him and at all times to keep such tax assessment records current and complete and

available for public inspection.
211.743 Notice of hearings; mailing.
Sec. 3.
On and after 30 days following the effective date of this act, any officer whose duty it is to give notice of hearings in special assessment proceedings may rely upon the last local tax assessment records in giving notice of hearing by mail. The method of giving notice by mail as provided in this act is declared to be the method that is reasonably certain to inform those to be assessed of the special assessment proceedings.
211.744 Invalidation of assessment; reassessment.
Sec. 4.
Any failure to give notice as required in section 1 shall not invalidate an entire assessment roll but only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court order or judgment, a reassessment against the property may be made.
211.745 Notice of hearings; validation of previously held hearings.
Sec. 5.
Notwithstanding the lack of a statute, charter or ordinance provision for the mailing of notice of hearings, each special assessment hearing heretofore held is validated insofar as any notice of hearing is concerned, if notice was given by mail to the owners or parties in interest whose names appeared at the time of mailing on the last local tax assessment records. Any such special assessment hearing is also validated as to any owner or party in interest who has actually received notice of hearing, has waived such notice, or has paid

any part of the special assessment.
211.746 Statement of right to file written appeal.
Sec. 6.
If a special assessment is made against property, the notice of the special assessment sent to the property owner or person responsible for payment of the ad valorem property taxes under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, shall include, in addition to any other requirements by statute or charter, a statement that the owner or any person having an interest in the real property may file a written appeal of the special assessment with the state tax tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

Supreme Court, U.S.
FILED
FEB 25 2005
OFFICE OF THE CLERK

(2)

No. 04-1063

In the

SUPREME COURT OF THE UNTED STATES

Rita C. Ferguson,

Petitioner,

v.

Township of Hamburg,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MICHIGAN COURT OF APPEALS

BRIEF IN OPPOSITION

PETER GOODSTEIN
Attorney for Respondent
702 Church Street
Flint, MI 48502
(810) 767-6860

QUESTIONS PRESENTED

1. Whether Petitioner received actual and timely notice of the creation of a special assessment district in which her property was included and whether Petitioner then received actual notice of the initial assessment sufficiently prior to when its payment was due in order to have either prevented the payment or contested the validity of the assessment?

2. Whether Petitioner's property was properly included in the special assessment district?

3. Whether the amount of the special assessment was disproportionate to the benefit bestowed?

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STATUTES AND ORDINANCES INVOLVED

The statutes and ordinances cited in this brief are reproduced in the Appendix.

STATEMENT OF THE CASE

Petitioner owns a four-unit apartment building located at 11505 Dunlavy Street in Hamburg Township, Michigan, hereinafter referred to as the "Property." On October 26, 1993 Petitioner executed a mortgage on the Property. Section 2 of the mortgage requires Petitioner to pay to the mortgagee funds sufficient for, *inter alia*, yearly taxes and assessments. The mortgagee is then required to pay those taxes and assessments from the funds received from the mortgagor.

Petitioner currently lives at 9715 Daisy Lane, Dexter, Michigan.

During calendar year 2000 Respondent proposed, pursuant to its Ordinance 69, the creation of a new special assessment district to pay for the installation of a sanitary sewer system that would benefit an area in which the Property is located. Respondent timely mailed on June 21, 2000 and December 22, 2000 the notices of hearings required to create such a district. The hearings were held July 6, 2000 and January 15, 2001. Newspaper publication was proper.

Respondent for several years had mailed correspondence to Petitioner at the Property's address, that is, at 11505 Dunlavy Street. In the spring of 2000 Petitioner asked that her mail be sent to 9715 Daisy Lane. The change of address was made in Respondent's database for tax year 2001. It was not made in earlier tax year databases. Respondent's utilities coordinator who was responsible for mailing the notices, used the database for tax year 2000 to

obtain addresses for affected property owners for purposes of mailing the notices of the June 21, 2000 and January 15, 2001 hearings. Consequently the notices of the hearings were sent to Petitioner at 11505 Dunlavy Street. Petitioner claims that she did not receive mailed notice of the special assessment hearings. Petitioner did, however, receive actual notice of her opportunity to appear at a public hearing in order to object to her assessment and of her right to appeal that assessment to the Michigan tax tribunal. Further, Petitioner also received actual notice of the amount of the assessment that would be placed on her tax bill. This notice was received prior to when Petitioner's mortgagee paid that bill.

Respondent's consulting engineer personally visited Petitioner and her husband on October 7, 2000 at the Property and informed her that the district would be created, that there would be a special assessment to pay for the district, that she could object to the amount of her assessment at a public hearing, and that if still not satisfied, could appeal the assessment to the Michigan tax tribunal. During this visit the consulting engineer and Petitioner agreed on where to place a grinder pump that would be required for the Property's connection to the proposed sanitary sewer. Petitioner's husband signed the dated grinder pump location sheet.

On December 5, 2001 a letter was sent to each property owner within the subject assessment district which letter included an amortization chart of the property owner's sewer assessment. Respondent's utilities coordinator also sent this letter. The addresses for the December 5, 2001 mailing came from the tax year 2001 database not the tax year 2000 database. The December 5, 2001 letter and amortization chart therefore went to Petitioner at the address Petitioner had requested, viz., 9715 Daisy Lane. Petitioner received this letter.

Petitioner and her husband met with the utilities coordinator on December 10, 2001 to discuss the amount of her assessment that was indicated in the letter of December 5, 2001. Petitioner's husband thought that the cost of the sewer should be only one-third of the amount calculated by the Respondent's consulting engineer. The utilities coordinator told Petitioner and her husband that the amount they thought should be assessed might be correct for a single family home; however, Petitioner's property is a four-unit apartment building.

The first assessment for the new district appeared on the 2001 winter tax bill. Petitioner's mortgagee received the tax bill and, pursuant to the terms of the mortgage, paid it on December 14, 2001.

On January 2, 2002 an environmental sanitarian employed by the Livingston County Health Department, the county in which Respondent township is located, wrote a letter to the Petitioner reporting the results of a December 19, 2001 visit to the Property. According to the sanitarian sewage was observed on the Property's surface. Testing of the sewage confirmed that it was sanitary waste and that it was surfacing over the existing septic area. Petitioner was informed that she was in violation of the Livingston County Sanitary Code. She was ordered to connect to Respondent's sanitary sewers within 30 days. Petitioner was also informed that a permit was required to alter her sewage system and that failure to comply with the order could result in civil penalties.

On March 1, 2002 the sanitarian wrote a second letter to Petitioner. The sanitarian stated that on February 27, 2002 he inspected the Property a second time. He performed this inspection with Petitioner and her husband and with the sanitarian's supervisor. The second inspection revealed that Petitioner had directly violated the order contained in the letter of January 2, 2002 in that on or about January 16, 2002 Petitioner had reconstructed an extensive portion of the

Property's septic system without obtaining a permit. Also of concern to the sanitarian was that part of the non-permitted reconstruction took place within 30 feet of the Huron River. The Livingston County Sanitary Code mandates 100 feet as the minimum isolation distance between surface water and a septic system. The sanitarian's second letter informed Petitioner that unless she came to an agreement with Respondent's Sewer Authority by December 1, 2002 the County Health Department would require the abandonment of the septic system and the vacancy of the apartment building located on the Property.

To date no agreement has been reached between Petitioner and Respondent's Sewer Authority. As of the date of Petitioner's Brief Petitioner has not contacted Respondent's Sewer Authority in order to attempt to come to an agreement. Petitioner has, however, installed a different septic field on the Property without requesting or obtaining any of the requisite permits.

On May 8, 2002 Petitioner filed an appeal with the Michigan tax tribunal. On May 31, 2002 the tribunal entered an order that dismissed the appeal *sua sponte*. Petitioner then filed a motion asking the tax tribunal to reconsider its order of dismissal. On August 30, 2002 the tax tribunal denied the motion to reconsider. Petitioner then filed a motion with the tax tribunal requesting relief from the tax tribunal's orders. While her motion was pending before the tax tribunal Petitioner filed an appeal with the Michigan court of appeals. Subsequent to the filing of that appeal the tax tribunal denied Petitioner's motion requesting relief. The Michigan court of appeals affirmed the decision of the tax tribunal to dismiss the appeal. Petitioner then filed an application for leave to appeal to the Michigan supreme court which application was denied. Following that denial Petitioner filed her petition with this Court.

SUMMARY OF THE ARGUMENT

Petitioner received actual notice of the meeting at which the challenged special assessment district was created. Petitioner wants more.

Petitioner's Property is located within a special assessment district created by Respondent in order to pay for the installation of sewers. While Petitioner may not have received mailed notice of the meetings at which Respondent's board decided to proceed with the district, Petitioner received actual notice. That notice was received from Respondent's engineer who was responsible for the design of the sewer. The notice was delivered by the engineer while at the Property discussing with Petitioner and her husband where to locate a grinder pump required by the planned sewer. At the conclusion of that meeting Petitioner's husband signed a sheet agreeing to the location of that pump.

Subsequent to the actual notice being delivered by Respondent's engineer, there was published in the local press notice that the township board was to meet to consider the creation of the district. Finally, prior to the assessment being paid, Petitioner received a copy of the bill and met with a township official to protest. Petitioner, despite having ample time to so do, did not instruct her escrow agent to not pay the assessment nor did she then seek any judicial intervention. Petitioner ignored, then slept on her rights.

Petitioner's Property has a history of health related issues. It was to alleviate problems such as those found on the Property that the special assessment district was created. Michigan law is clear that Respondent has the authority to include the Property in the district.

Petitioner's argument that the assessment is excessive in light of the benefit bestowed misconstrues and misstates the facts of this case and the applicable law. Regardless of those errors, that issue was not decided below and should not be argued here.

ARGUMENT

I. Petitioner received actual and timely notice of the creation of a special assessment district in which her property was included and Petitioner then received actual notice of the initial assessment sufficiently prior to when its payment was due in order to have taken action to preserve any rights she may have had.

Michigan statutes concerning the creation of special assessment districts by townships, e.g., Mich. Comp. L. 41.721. *et. seq.*, Mich. Comp. L. 211.741 *et. seq.*, require a two hearing process. The initial hearing is for the township board to study issues such as whether a district should be created, the anticipated cost of the planned district if it is created, and to allow the board to hear objections to its creation and the necessity of the improvement. If the township board decides to go ahead with the district a second meeting is held to confirm the assessment. Notice is required for each of these meetings.

Mich. Comp. L. 41.724a(5) states:

> Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment, a reassessment against the property may be made, (emphasis supplied).

Mich. Comp. L. 211.744 states:

> Any failure to give notice as required in section 1 shall not invalidate an entire assessment roll but only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court order or judgment, a reassessment against the property may be made, (emphasis supplied).

Petitioner actually received notice. The Michigan tax tribunal so found and the court of appeals refused to reverse that fact determination. On October 7, 2000 Respondent's consulting engineer met Petitioner and her husband at the Property. The engineer explained, *inter alia*, the following to Petitioner and her husband: that a grinder pump, the sewer lateral and the electrical supply would be installed as part of the proposed new sewer system, that the system would be funded with a special assessment, that the Property would receive a duplex pump station because Petitioner's building on the Property is a four unit rental, that the meeting held on July 6, 2000 proposed the boundaries of the special assessment district and that the subsequent meeting, which was held January 15, 2001, would consider the amount of assessment for each parcel included in the district, and that if Petitioner was not happy with the result of the second meeting she could appeal to the Michigan tax tribunal. The consulting engineer and Petitioner's husband agreed on a location for the required grinder pump. Her husband signed a form so indicating.

The facts here are not similar to those in *Armstrong v. Manzo*, 380 U.S. 545 (1965). In *Armstrong* the petitioner received no notice until after his parental rights were terminated. Petitioner here was informed of the hearing prior to it taking place in January 2001. She was granted an opportunity to be heard at a meaningful time and in a meaningful manner, Id., at 552. Nor is this case similar to *Fuentes v. Shevin*, 407 U.S. 67 (1972) where the issue was whether notice was given at a meaningful time since here notice was personally given several months prior to the meeting at which the assessment was passed.

Further, subsequent to the meeting between Respondent's engineer and Petitioner and her husband, notice of the January 2001 meeting was published in a local newspaper. Respondent does not claim that "...publication alone...is a reliable means of acquainting interested parties of the fact that their rights are before the courts," *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950). However, more than "chance alone," Id., is involved in newspaper notice if an interested party has been personally informed of the impending event prior to publication. Here "...publication was reinforced by steps likely to attract the parties attention to the proceedings," Id at 316.

Petitioner ignored the information supplied by the engineer. Petitioner ignored the information published in the local newspaper. Having received actual and timely notice of the creation of the special assessment district in which the Property was to be included, and having ignored that notice, Petitioner should not be able to claim here that she did not receive it.

In addition to the notice given by the engineer and newspaper publication, Petitioner received a tax bill that indicated the amount of the assessment prior to payment for the assessment being both due and paid.

On December 5, 2001 Respondent sent a letter to Petitioner that included an amortization chart of the

assessment applied to the Property. This letter was sent to 9715 Daisy Lane, the address at which Petitioner resides. Petitioner received the letter and called immediately to schedule a meeting with Respondent's utilities coordinator to protest the amount of the assessment. That meeting was held December 10, 2001.

Per the terms of the mortgage on the Property, Petitioner's mortgagee had authority to pay "yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the property..." An unpaid special assessment on the Property may most definitely attain priority over the mortgagee's security interest. Mich. Comp. L. 41.730 requires that delinquent special assessments be treated as unpaid taxes. If property taxes are unpaid for a sufficient period of time real estate is transferred pursuant to a circuit court judgment of foreclosure to the county's foreclosing governmental unit. According to Mich. Comp. L. 211.78k(5)(c) that transfer grants fee simple title in the real estate to the foreclosing governmental unit free of all liens except future installments of special assessments and liens recorded pursuant to the state's natural resources and environmental protection act.

In order to protect its security, and acting in conformance with the terms of the mortgage, the mortgagee paid the assessment out of the escrow account. This payment was made December 14, 2001.

It is black letter agency law that a "...a principal is affected with knowledge of all material facts of which his agent receives notice or acquires knowledge while acting in the course of his employment and within the scope of his authority, although the agent does not in fact inform his principal thereof," Michigan Law and Practice, Agency, § 111.

But Petitioner had the same knowledge that the mortgagee, her escrow agent, had. The mortgage had been in place since October 1993. Payments had been made each

year for eight years by the time the payment at issue here was made. Petitioner, having received actual notice of the initial assessment, knew that the payment was going to be made by the mortgagee and she knew it in time to have taken action in order to preserve any rights she may have had. *Goldberg v. Kelly,* 397 U.S. 254 (1970).

II. Petitioner's property was properly included in the special assessment district.

Petitioner argues that because her apartment building is more than 200 feet from the right of way she is not required to connect to the sewer, Petitioner cites Mich. Com. L. 333.12751 in support of her position. This issue was never decided below. Nevertheless, Petitioner's argument is faulty and her reliance on that statute is misplaced.

Respondent's Ordinance 69, §7(A)(4)(a), requires "any existing structure located within a special assessment district created for the purpose of building and/or maintaining a sanitary sewer shall connect to the available sanitary sewer ...," (emphasis supplied). For an existing structure within a special assessment district there is no maximum distance beyond which connection is not required. The issue of distance arises if a structure is located outside the special assessment district. Thus, Ordinance 69, §7(A)(4)(b), requires an existing structure located outside a special assessment district to connect to a sanitary sewer if the structure is not more than 400 feet at the nearest point to the sanitary sewer. Because her apartment building is located within the special assessment district Ordinance 69 requires Petitioner to connect to the sewer regardless of how far her building is from the right of way.

Mich. Comp. L. 333.12751 defines "available public sanitary sewer system" as a public sanitary sewer system located in a right of way, easement, highway, street, or

public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates." Mich. Comp. L. 333.12752 states that "the connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination."

Petitioner assumes that because the term "available" is defined in Mich. Comp. L. 333.12751 as a sanitary sewer not more than 200 feet from a structure Respondent has no authority to require a structure located more than 200 feet from a right of way to connect to a sanitary sewer. Petitioner is wrong.

Mich. Comp. L. 333.12758(2) states that "sections 12752 to 12758 are in addition to and not in limitation of the power of a governmental unit to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system." This language is the same as the language that was in Michigan Public Act 288 of 1972, §7. That statute was repealed by Michigan Public Act 368 of 1978, the act that contains, *inter* alia, Mich. Comp. L. 333.12751, Mich. Comp. L. 333.12752 and Mich. Comp. L. 333.12758.

The Michigan Attorney General addressed the question of whether, under Michigan Public Act 288 of 1972 a municipality could enforce an ordinance compelling a structure located more than 200 feet from a sanitary sewer to connect to that sewer. Citing the language now contained in Mich. Comp. L. 333.12758(2), the state Attorney General opined that such an ordinance could be enforced. The language "...is clearly indicative of the legislative intent. The act is not to be construed as a limitation of the power of municipal units of government to compel connection to public sewer systems. The State has not, by enactment of

1972 PA 288, reserved the field of regulation to itself," Opinions of the Attorney General 5372, 1978 Mich. AG LEXIS 47, pp. 8-9.

The condition of Petitioner's septic system reinforces the need for such local authority. Petitioner's field, located 30 feet from the Huron River, has had problems with sanitary waste surfacing. Contrary to ordinance and contrary to the order contained in a January 2, 2002 letter from the Livingston County Health Department, Petitioner attempted to "fix" her septic system without obtaining the necessary permits.

The legislature has found that "public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state," Mich. Comp. L. 333.12752. Petitioner's system failed. Her illegal attempt to "fix" the system failed. Her apartment building presents "a potential for ill health" that connection to the sanitary sewer would eliminate.

It cannot be said that Petitioner's property was improperly included in the special assessment district since Respondent clearly has the authority to require Petitioner to connect to the sanitary sewer constructed in the special assessment district. However, the issue not having been addressed in the state courts, it ought not be addressed here, *TRW Inc. v. Andrews*, 534 U.S. 19 (2001); further, even if the issue had been addressed in the state courts the outcome would have been solely based on state law and should not be reviewed here. *Murdock v. Memphis*, 22 L. Ed. 429 (1875).

III. The amount of the special assessment was not disproportionate to the benefit bestowed.

This issue, like the issue of whether Respondent had the authority to include the Property in the special assessment district, was not addressed in the state court and ought not be addressed here. Nevertheless, Petitioner has incorrectly stated the applicable law. Petitioner states that the cost of the sanitary sewer will be 7.05 times more than the increase in value to the Property. To reach this conclusion Petitioner took the Property's 2001 state equalized value of $111,800 and doubled it to obtain a true cash, or market, value of $223,600. Petitioner then took the Property's 2002 state equalized value of $114,500 and doubled it to obtain a true cash, or market, value of value of 229,000.

No appraisals were done to verify that the assessor's increase in market value was correct. Nor was an appraisal done to verify the increase in the Property's value that would result from the sewer installation.

Based only on the assessor's records the 2002 true cash value was $5,400 more than the 2001 true cash value. Petitioner compared the $5,400 increase in true cash value to the $38,073.79 which amount is the total cost of the special assessment. Finally Petitioner concluded that $38,073.79 is 7.05 times more the 2002 increase in true cash value and therefore disproportional under the principle enunciated in *Dixon Road Group et. al. v. The City of Novi*, 426 Mich 390, 395 N.W.2d 211 (1986).

Petitioner also refers to *Eleanor Recsteiner v. Township of Blumfield,* Michigan tax tribunal Docket 246853, 2000 Mich Tax LEXIS 2 as authority for her method calculating the increase in the Property's value and determining whether the benefit was disproportionate to the cost.

The tax tribunal did not decide whether the cost of the special assessment was disproportionate to the increase in the Property's value. This appeal was dismissed for other reasons and so the tax tribunal never had to decide whether the special assessment was disproportionate to the increase in value attributable to the sanitary sewer. Furthermore, Petitioner's reliance on the tax tribunal's opinion in *Recsteiner, supra,* is misplaced. That case dealt with the installation of a water line, not a sanitary sewer. Local governments do not have the same ability to require a property owner to connect to a water line that they have with respect to a sewer line. Furthermore, in *Recsteiner* the evidence indicated that the water in petitioner's well was safe to drink. There was a full hearing. Appraisers testified. The various approaches concerning how to measure the increase in value attributable to the water line were presented and analyzed. Perhaps most importantly, the respondent's own appraiser testified that the increase in value attributable to the water line was less than the amount specially assessed. The tax tribunal did not then enjoin the respondent from including the petitioner in the special assessment district as Petitioner here would like. Rather, the tax tribunal upheld the assessment and used the respondent's evidence of value as the basis for determining the amount by which the value of the petitioner's property increased.

This case is entirely different. There is evidence that the Petitioner's septic system has been a health hazard. There has been no hearing in the tax tribunal to determine whether the assessment is proportionate to the increase in the Property's value. No appraisers have testified and been cross-examined. Not having litigated the issue of proportionality in the tax tribunal there is no reason to consider that issue now, *TRW Inc. v. Andrews*, 534 US 19 (2001).

CONCLUSION

Supreme Court Rule 10, although by its own terms "neither controlling nor fully measuring the Court's discretion, indicate(s) the character of the reasons the Court considers..." when reviewing a petition for a writ of certiorari. None of the listed reasons apply here. This case does not involve a decision of a United States court of appeals that conflicts with another federal court of appeals; it does not involve a decision of a state court of last resort that has decided an important federal question in a way that conflicts with a federal court of appeals or another state court of last resort; nor does it involve a state court of federal court of appeals decision of an important federal question that conflicts with a decision of this Court.

This case concerns a claim by Petitioner that she did not receive actual notice of a meeting at which Respondent created a special assessment district. Respondent claims she did receive actual notice of that meeting. The Michigan tax tribunal found that Petitioner received actual notice. The state court of appeals refused to set aside that finding. At its core this case is not about what process is due from a legal standpoint; it concerns whether Petitioner factually received that process.

Rule 10 concludes with the statement "a petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." That is exactly what Petitioner is asking this Court to do.

The fundamental question here is whether Petitioner received actual notice of the meeting at which a special assessment district was created in advance of the date it was held. The Michigan courts have determined she did. Petitioner denies it. That is a question of fact. There is no "important federal question" involved. Consequently there is

no reason to disturb the decisions of the Michigan forums that have ruled on this case.

The judgment of the Michigan court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

STATUTES AND ORDINANCES INVOLVED

MICHIGAN STATUTES:

§ 41.724a. Notice of hearings in special assessment proceedings.

Sec. 4a. (1) If special assessments are made against property, notice of hearings in the special assessment proceedings shall be given as provided in this section.

(2) Notice of hearings in special assessment proceedings shall be given to each record owner of, or party in interest in, property to be assessed whose name appears upon the last township tax assessment records by first-class mail addressed to the record owner or party in interest at the address shown on the tax records, at least 10 days before the date of the hearing. The last township tax assessment records means the last assessment roll for ad valorem tax purposes that was reviewed by the township board of review, as supplemented by any subsequent changes in the names or the addresses of the owners or parties listed on that roll. If a record owner's name does not appear on the township tax assessment records, then notice shall be given by first-class mail addressed to the record owner at the address shown by the records of the county register of deeds at least 10 days before the date of the hearing. Notice shall also be published twice before the hearing in a newspaper circulating in the township. The first publication shall be at least 10 days before the date of the hearing. If a published notice includes a list of the property identification numbers of the property to be assessed, that list may provide either the individual property identification number for each parcel of property to be assessed or 1 or more sequential sets of property identification numbers, which include each parcel

of property to be assessed. If a published notice includes a list of the property identification numbers of the property to be assessed, that published notice shall also include either a map depicting the area of the proposed special assessment district or a written description of the proposed special assessment district.

(3) If a person whose name and correct address do not appear upon the last township tax assessment records claims an interest in real property, that person shall immediately file his or her name and address with the township supervisor. This filing is effective only for the purpose of establishing a record of the names and addresses of those persons entitled to notice of hearings in special assessment proceedings. The supervisor shall immediately enter on the tax assessment records any changes in the names and addresses of record owners or parties in interest filed with the supervisor and at all times shall keep the tax assessment records current, complete, and available for public inspection.

(4) A township officer required to give notice of a hearing in special assessment proceedings may rely upon the last township tax assessment records in giving notice of the hearing by mail. The method of giving notice by mail as provided in this section is declared to be the method that is reasonably certain to inform those to be assessed of the special assessment proceedings.

(5) Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment, a reassessment against the property may be made.

(6) A special assessment hearing held before June 5, 1974 is validated, insofar as any notice of hearing is concerned, if notice was given by mail to the owners or parties in interest whose names appeared at the time of mailing on the last township tax assessment records. Any such special assessment hearing is validated as to any owner or party in interest who actually received notice of hearing, waived the notice, or paid any part of the special assessment.

§ 41.730. Reassessment of delinquent assessments. Sec. 10. In case the treasurer shall, as above provided, report as delinquent any assessment or part thereof, the township board shall certify the same to the supervisor, who shall reassess on the annual township tax roll of such year in a column headed "special assessments" the sum so delinquent, with interest and penalties to September 1 of such year, and an additional penalty of 6% of the total amount. Thereafter the statutes relating to township taxes shall be applicable to such reassessments.

§ 211.78k. Proof of service of notice; filing with circuit court; contesting validity or correctness by person claiming property interest; filing objections; order extending redemption period; entry of judgment; specifications; failure to pay delinquent taxes, interest, penalties, and fees after entry of judgment; appeal to court of appeals; recording judgment or notice of judgment; cancellation; submission of certificate of error.
Sec. 78k. (1) If a petition for foreclosure is filed under section 78h, not later than the date of the hearing, the foreclosing governmental unit shall file with the clerk of the circuit court proof of service of the notice of the show cause

hearing under section 78j, proof of service of the notice of the foreclosure hearing under this section, and proof of the personal visit to the property and publication under section 78i.

(2) A person claiming an interest in a parcel of property set forth in the petition for foreclosure may contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees for 1 or more of the following reasons:

(a) No law authorizes the tax.

(b) The person appointed to decide whether a tax shall be levied under a law of this state acted without jurisdiction, or did not impose the tax in question.

(c) The property was exempt from the tax in question, or the tax was not legally levied.

(d) The tax has been paid within the time limited by law for payment or redemption.

(e) The tax was assessed fraudulently.

(f) The description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

(3) A person claiming an interest in a parcel of property set forth in the petition for foreclosure who desires to contest that petition shall file written objections with the clerk of the circuit court and serve those objections on the foreclosing governmental unit prior to the date of the hearing required under this section.

(4) If the court determines that the owner of property subject to foreclosure is a minor heir, is incompetent, is without means of support, or is undergoing a substantial financial hardship, the court may withhold that property from foreclosure for 1 year or may enter an order extending the redemption period as the court determines to be equitable. If the court withholds property from foreclosure under this subsection, a taxing unit's lien for taxes due is not prejudiced and that property shall be included in the immediately

succeeding year's tax foreclosure proceeding.

(5) The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case 21 days after the entry of a judgment foreclosing the property under this section. The circuit court's judgment shall specify all of the following:

(a) The legal description and, if known, the street address of the property foreclosed and the forfeited unpaid delinquent taxes, interest, penalties, and fees due on each parcel of property.

(b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(c) That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to MCL 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are

not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(e) That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(f) A finding that all persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity. A person shall be deemed to have been provided notice and an opportunity to be heard if the foreclosing governmental unit followed the procedures for provision of notice by mail, for visits to forfeited property, and for publication under section 78i, or if 1 or more of the following apply:

(i) The person had constructive notice of the hearing under this section by acquiring an interest in the property after the date the notice of forfeiture is recorded under section 78g.

(ii) The person appeared at the hearing under this section or filed written objections with the clerk of the circuit court under subsection (3) prior to the hearing.

(iii) Prior to the hearing under this section, the person had actual notice of the hearing.

(g) A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

(6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9).

(7) The foreclosing governmental unit or a person claiming to have a property interest under section 78i in property foreclosed under this section may appeal the circuit court's order or the circuit court's judgment foreclosing property to the court of appeals. An appeal under this subsection is limited to the record of the proceedings in the circuit court under this section and shall not be de novo. The circuit court's judgment foreclosing property shall be stayed until

the court of appeals has reversed, modified, or affirmed that judgment. If an appeal under this subsection stays the circuit court's judgment foreclosing property, the circuit court's judgment is stayed only as to the property that is the subject of that appeal and the circuit court's judgment foreclosing other property that is not the subject of that appeal is not stayed. To appeal the circuit court's judgment foreclosing property, a person appealing the judgment shall pay to the county treasurer the amount determined to be due to the county treasurer under the judgment on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, together with a notice of appeal. If the circuit court's judgment foreclosing the property is affirmed on appeal, the amount determined to be due shall be refunded to the person who appealed the judgment. If the circuit court's judgment foreclosing the property is reversed or modified on appeal, the county treasurer shall refund the amount determined to be due to the person who appealed the judgment, if any, and retain the balance in accordance with the order of the court of appeals.

(8) The foreclosing governmental unit shall record a notice of judgment for each parcel of foreclosed property in the office of the register of deeds for the county in which the foreclosed property is located in a form prescribed by the department of treasury.

(9) After the entry of a judgment foreclosing the property under this section, if the property has not been transferred under section 78m to a person other than the foreclosing governmental unit, a foreclosing governmental unit may cancel the foreclosure by recording with the register of deeds for the county in which the property is located a certificate of error in a form prescribed by the department of treasury, if the foreclosing governmental unit discovers any of the

following:

(a) The foreclosed property was not subject to taxation on the date of the assessment of the unpaid taxes for which the property was foreclosed.

(b) The description of the property used in the assessment of the unpaid taxes for which the property was foreclosed was so indefinite or erroneous that the forfeiture of the property was void.

(c) The taxes for which the property was foreclosed had been paid to the proper officer within the time provided under this act for the payment of the taxes or the redemption of the property.

(d) A certificate, including a certificate issued under section 135, or other written verification authorized by law was issued by the proper officer within the time provided under this act for the payment of the taxes for which the property was foreclosed or for the redemption of the property.

(e) An owner of an interest in the property entitled to notice under section 78i was not provided notice sufficient to satisfy the minimum requirements of due process required under the state constitution of 1963 and the constitution of the United States.

(f) A judgment of foreclosure was entered under this section in violation of an order issued by a United States bankruptcy court.

(10) A certificate of error submitted to the county register of deeds for recording under subsection (9) need not be notarized and may be authenticated by a digital signature of the foreclosing governmental unit or by other electronic means.

§ 211.744. Failure to give notice; actual notice; waiver of notice; payment of assessment; reassessment.

Sec. 4. Any failure to give notice as required in section 1 shall not invalidate an entire assessment roll but only the assessments on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest thereof has actually received notice, has waived notice, or has paid any part of the assessment. If any assessment is declared void by court order or judgment, a reassessment against the property may be made.

§ 333.12751. Definitions pertaining to sections 12752-12758.

Sec. 12751. As used in sections 12752 to 12758:

(a) "Acceptable alternative greywater system" means a system for the treatment and disposal of waste water which normally does not receive human body wastes or industrial waste and is approved for use by a local health department.

(b) "Acceptable innovative or alternative waste treatment system" means a decentralized or individual waste system which has been approved for use by a local health department and which is properly operated and maintained so as not to cause a health hazard or nuisance. An acceptable innovative or alternative waste treatment system may include, but is not limited to, an organic waste treatment system or compost toilet which operates on the principle of decomposition of heterogeneous organic materials by aerobic and facultatively anaerobic organisms and utilizes an effectively aerobic composting process which produces a stabilized humus. Acceptable innovative or alternative waste treatment system does not include a septic tank--drain field system or any other system which is determined by the department to pose a similar threat to the public health, safety and welfare, and the quality of surface and subsurface waters of this state.

(c) "Available public sanitary sewer system" means a public sanitary sewer system located in a right of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates.

(d) "Person" means a person as defined in section 1106 or a governmental entity.

(e) "Public sanitary sewer system" means a sanitary sewer or a combined sanitary and storm sewer used or intended for use by the public for the collection and transportation of sanitary sewage for treatment or disposal.

(f) "Structure in which sanitary sewage originates" or "structure" means a building in which toilet, kitchen, laundry, bathing, or other facilities which generate water-carried sanitary sewage are used or are available for use for household, commercial, industrial, or other purposes.

§ 333.12752. Sanitary sewer systems; public interest; declaration as legislative determination.

Sec. 12752. Public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state. The connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination.

§ 333.12758. Voluntary connection; government agencies, act provisions are in addition to, not limitation of powers.

Sec. 12758. (1) Sections 12752 to 12758 shall not limit the right of the owner of a structure in which sanitary sewage originates voluntarily to connect the structure to a public sanitary sewer system where the operator of the system agrees to the connection.

(2) Sections 12752 to 12758 are in addition to and not in limitation of the power of a governmental unit to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system.

TOWNSHIP ORDINANCE:

Ordinance 69: Wastewater Treatment and Administration Ordinance.

§7(A)(4) *Mandatory Connections.*

a. *New and existing structures located within sewer special assessment districts (SADDs).* Any existing structure located within a special assessment district created for the purpose of building and/or maintaining a sanitary sewer shall connect to the available sanitary sewer within twelve (12) months after publication by the Township of a legal notice of the availability of the sanitary sewer in a newspaper of general circulation in the Township and/or by individual notice. Connection for any new structure must be made prior to the time the structure is occupied.

b. *Existing structures not located within sewer special assessment districts (SSADs).* Any existing structure shall connect to the sanitary sewer after publication by the

Township of a legal notice of the availability of the sanitary sewer in a newspaper of general circulation in the Township and/or by individual notice. For purposes of this section, a sanitary sewer shall be considered to be available when it is located not more than four hundred feet (400') at the nearest point from the structure. All existing structures shall connect upon the earlier of the occurrence of the following three events:

(i) In the case where existing on-site sewage disposal systems were installed and a permit was issued by the Livingston County Health Department, DEQ, and/or MDPH, fifteen (15) years from the date of the said permit.

(ii) In the case where on-site sewage disposal exists for which no permits were issued by the LCHD, DEQ, and/or MDPH, connections must be made immediately.

(iii) Whenever any modifications to or replacement of any on-site sewage disposal systems that requires the issuance of a permit through LCHD, DEQ, and/or MDPH.

(3)

Supreme Court, U.S.
FILED
MAR 24 2005
OFFICE OF THE CLERK

No. 04-1063

In the
SUPREME COURT OF THE UNITED STATES
October Term, 2004

Rita C. Ferguson, *Petitioner,*
v.
Township of Hamburg, *Respondent.*

On Petition for a Writ of Certiorari to the
Michigan Court of Appeals

REPLY TO BRIEF IN OPPOSITION

Rita C. Ferguson
9715 Daisy Lane
Dexter, Michigan 48130
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Pro Se

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APPENDIX A A-1

REPLY TO BRIEF IN OPPOSITION

"The Health Officer may condemn any existing or hereafter constructed individual sewage disposal system **when such system will not accept sewage effluent resulting in interference with plumbing fixture use**; or **where the sewage effluent exceeds the infiltrative capacity of the soil ...Such a sewage system as condemned shall be repaired**, rebuilt, or replaced by a system constructed according to the provisions of these regulations within a period of time specified by the Health Officer." Section 301.18 Livingston County Sanitary Code

In reply to the alleged health code violations, please see the two letters sent to the Health Department that are reproduced in the Appendix. The first letter includes four photographs of the sewage effluent, a small area 9" X 32", and of a damaged header pipe, and the repair to that pipe. The damage consisted of a single hole ½" X 1 1/2". It also includes four tenant letters. These exhibits rebut Respondent's argument of a Section 301.18 failing drainfield. The four tenant letters indicate that there has never been any problem with the toilets flushing properly or the drains backing up, as would occur if a drainfield was in fact failing. They document a fourteen year history of trouble free plumbing, and a trouble free drainfield contrary to Respondent's assertions of a "history" of health violations.

Both the environmental sanitarian employed by the Health Department and his boss were satisfied with the lawful repair completed within the time that Section 301.18 allows. This was not an "illegal fix" as Respondent maintains. Both inspected the property after reading the tenant letters and viewing the sequence of repair photographs. And both, contrary to Respondent's assertion, indicated the repair to the hole in the header pipe did not require a permit. Furthermore, both were suspicious of Respondent's involvement, since the damage occurred so soon after the dispute with the township arose. Less than a week and a half later.

Let's consider that damage. Photo 1 shows an area of effluent approximately 9 inches by 32 inches. One can reasonably infer from the small amount of effluent that the

hole was of recent origin, otherwise there would have been much more effluent on the ground. Photo 2 shows the hole. This hole was located directly on top of the pipe, not on the side or the bottom, and not from a crack The header pipe is thick walled and solid, it would have taken a deliberate blow to the top of the pipe to perforate the thick plastic. The remaining pipes were checked for holes, none were found. A singular hole could be expected where someone had trespassed onto the property and knocked a hole in the pipe, and then left quickly to avoid detection. A failing drainfield, on the other hand, will have effluent surfacing in multiple locations, because it results from soil that is saturated and can no longer absorb effluent. Furthermore the underlying soil was found to be pure sand and gravel. That type of soil is highly absorptive and the best possible combination for a drainfield,. The hole was knocked in the header pipe, not a lateral line. This gives an important clue as to who did it because an engineer would know that a hole in a header pipe would produce the maximum effluent in the least amount of time as opposed to a hole in a lateral pipe. That is where the effluent is collected before it is distributed in the laterals. The purpose of a header pipe hole was to maximize effluent before quickly arranging for the sanitarian to collect a sample. This evidence would then be used to try to force a connection via a health code violation.

> "I believe we have a scenario where someone deliberately knocked a hole in my pipe. That hole has been repaired and the sewage disposal system is again functioning normally, just as it was prior to the damage." Page 1, paragraph 5, letter 1-25-02

Subsequent to the repair, and over the last three years that this case has been winding its way slowly through the court system, the same health department sanitarian has periodically inspected the site. He has never found any effluent on the surface of the ground at any time during this three year period. That would not be the case if the drainfield was in fact a failing drainfield as Respondent nonetheless steadfastly maintains.

Why was John Adams, Respondent's Township Engineer, trespassing on the owner's property a week and a half after the dispute arose? Other than Petitioner's husband, he was the only living person that knew the location of the drainfield lateral lines and header pipe. He was there for a purpose – to manufacture evidence. He didn't just "discover" the sewage effluent from a "failing drainfield" in the middle of seven acres. On the day of the secret inspection the sanitarian was unsuccessfully looking for the drainfield . The health department sanitarian couldn't find the drainfield, and had been looking for a long time. But John Adams showed up and was able to then lead him to the opposite side of the building and point to the exact location of the very small area of effluent on the seven acres. The sanitarian then took the effluent sample.

He just happened to show up again when a "workman" was inspecting the lateral pipes for additional holes. Pretending to be a Health Department employee, he ordered the "workman" to stop work. That "workman", who in fact was Petitioner's husband, recognized John Adams. When he identified himself, Adams then changed his story and admitted he was from the township, now claiming he was acting on a neighbor complaint he had just received by telephone. When Petitioner's husband asked which neighbor had just called him, he incredibly could not come up with the name.

This is the same John Adams who later manufactured an affidavit to cover up the township failure of written notices and hearings alleging oral notification of all the rights and hearings required to be given in writing, and which were never given, either orally or in writing. How many instances of manufactured evidence, breaking the law, acting lawlessly, lying, fraud and deception does Petitioner have to uncover? Both the manufactured health code violation and cover up affidavit have been paraded shamelessly before the Michigan Court of Appeals, Michigan Supreme Court, and now the Supreme Court of the United States. Respondent claims this case is about a he said /she said affidavit. Petitioner agrees this case is about fraud and deception, but more importantly about the 14th Amendment due process requirement of an

opportunity to appear and defend prior to deprivation of property, a federal question.

The manufactured health code violation of John Adams fails upon analysis. If the Court is to meet its constitutional responsibilities of preventing a serious erosion of federal rights and a grave miscarriage of justice, it cannot permit itself to be completely bound by a state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding. Petitioner was never allowed to cross examine her accuser or present rebuttal evidence in a hearing. The MTT claimed to have lost her rebuttal counter affidavits, but two copies were in the MTT file and before the COA, the copies she mailed, and the copies she had hand delivered.

An order resting upon fraud and deception necessarily must fall. Respondent has fraudulently represented, even now again in its Brief in Opposition before this Supreme Court of the United States, that there was an illegal fix of the drainfield (when it knows the repair was lawful), that there is effluent on the surface of the ground (when it knows that three years of repeated reinspections have shown otherwise), and that there is a failing drainfield and health code violation (when it knows otherwise).

Furthermore, Respondent has failed to disclose to this Court that there is another Livingston County Health Department approved drainfield on the property, and that there is an agreement between the owner and the Health Department that if the existing drainfield should ever in fact actually fail, that the owner would hook up to that second drainfield, or relocate the drainfield to another location on the seven acre property.

Nor has Respondent disclosed to this Court that John Adams filed an additional false complaint with the Department of Natural Resources alleging Section 301.18 effluent being discharged into the waters of the State, and alleging that the drainfield was located too near Long Lake, which the property fronts upon, but which frontage is over 300 feet away from the drainfield. On or about 4-15-02 Petitioner's tenant met with two female state inspectors who arrived unannounced, answering their questions, and observing their extensive investigation. The investigators

reported to the tenant prior to leaving that they believed the allegations were unfounded and that they found no violations. Respondent is aware of their conclusions, and is misleading this Court by its failure to disclose this contradictory finding.

Who's telling the truth? Respondent argues this is a case where the courts sided with the Township on the issue of the he said/she said affidavits. Petitioner disagrees. The MTT claimed it had no jurisdiction. The COA says the MTT made findings of fact based upon a reasonable person standard. Would a reasonable person listen to only one side's affidavits in a dispute? Would a reasonable person think that a court that has no jurisdiction to hear and decide can nonetheless make findings of fact? Would a reasonable person consider only the mortgage language dealing with the establishment of an escrow account for legitimate charges, but ignore the mortgage language dealing with disputed liens? Would a reasonable person overlook the illegal action of "misfiling" the change of address (by the Supervisor), the perjury and sabotage (of the engineer), the lying and recanting (of the utilities coordinator), the oral and written deception of township officials as to appeal rights (utilities coordinator, supervisor, assessor), and the sending of notification by Respondent ten months after expiration of a thirty day statute of limitations? How would a reasonable person view the "loss" of the counter-affidavits by the MTT? Or the fact that no oral or written notice of hearing, or any hearing, occurred prior to deprivation of Petitioner's property at the 1st public hearing?

Rita Ferguson is a trustworthy and honest person. She has been saving lives on the heart surgery floor for 28 years at St. Joseph Mercy Hospital, and teaches young aspiring students at the school of nursing. She has a AAA credit rating and has always paid the taxes she owes promptly and on time. She is an outstanding landlord, according to her tenant letters, and was complimented on the prompt, efficient, and thorough manner she addressed the damaged header pipe by the Health Department sanitarian and his boss. She is unwilling to pay for a sewer which is too far away and from which she receives no benefit. And contrary to Respondent's assertions, Petitioner is not required, under the mortgage agreement, to

pay disputed liens. She wants to be made whole, to have her property excluded from the special assessment district- as it would have been, and should have been, had she been notified and had an opportunity to appear and defend prior to deprivation of her property by inclusion at the 1st public hearing. That is exactly what the lack of change of address, lack of notices, lack of hearings, cover up affidavit and fraudulent allegations of health code violations were manufactured to prevent. To condone these actions would be a violation of her civil rights and a miscarriage of justice.

Petitioner's civil rights have been and are continuing to be violated by Respondent. That makes this case a federal case with federal questions, very important federal questions.

Out of the hundreds of special assessment cases before Respondent, Petitioner, a non-white owner, was the only owner not to have received the mandatory written notices of hearings and appeal rights. Her change of address was the only change of address "lost" and "misfiled" so that a domino chain of events ensued depriving her of her property without due process. As a non-white owner she has been singled out, and has received no predeprivation consideration at either the 1st or 2nd public hearings required by Michigan and Federal law, and no postdeprivation consideration on the merits.

All ethnic white property owners received notice of the 1st public hearing. Those white owners that appeared to defend, and that indicated their properties were more than 400 feet away, had their properties excluded from the special assessment district. However, since Petitioner did not receive notice of the 1st public hearing, through no fault of her own, Petitioner is being treated dissimilarly, and suddenly Respondent Township newly maintains that there is no distance limit for exclusion of her property. In other words, white property owners receive full consideration from the Township, but non-white owners are discriminated against arbitrarily, by changing the rules for non-white property owners. White owners that are over 400 feet away have their property excluded from the special assessment district, but non-white owners that are over 400 feet away have their property included in the special assessment district.

And by the reasoning advanced by Respondent, that the Attorney General Opinion of 1978 allows its Ordinance 69 to state "there is no maximum distance beyond which connection is not required.", this Supreme Court may itself one day receive a notice that it has been included in the next Hamburg Township Sewer Special Assessment District, and a later notice that a connection is required, and at any cost it names. Respondent's argument is faulty and her reliance on that Attorney General Opinion is misplaced. The Michigan Court of Appeals cases cited have consistently ruled townships may not force sewer connections beyond the 200 foot limit of MCL 333.12751 when a sanitary sewer is more than 200 feet from a structure. There is not one Michigan case allowing a township to use the Attorney General opinion to force connection to a sewer that is beyond the 200 foot limit established by state statute. Respondent is attempting to ignore Michigan case law, and to use this case to establish an unwarranted precedent, for both Federal and Michigan law.

Respondent's argument assumes Petitioner's building is within its special assessment district simply because it says so. Petitioner's federal claims are so central to this controversy as to preclude resting the judgment on what Respondent mistakenly argues are independent and adequate state grounds. The 1st and 2nd public hearings are an attempt by the State to formalize the due process rights of landowners. Respondent's argument in effect eliminates any requirement for due process afforded by a 1st public hearing. Structures are incorporated into special assessment districts at 1st public hearings. Inclusion in special assessment districts results in a deprivation of property rights and subjects included properties to liens determined at the subsequent 2nd public hearings. The failure to notify Petitioner and afford her the opportunity to defend at the 1st public hearing meant that the inclusion of her property was constitutionally invalid because it was a deprivation of property without the due process guaranteed by the 14th Amendment of the United States Constitution. Respondent is now asking this Court to condone its actions. And the township's new argument is contrary to its own actions, in excluding white owned properties more than 400 feet away at the 1st public hearing.

The result is racial discrimination against non-white owners in violation of federal law.

No white property owners had their property trespassed upon and their drainfields sabotaged. And no false cover-up affidavits were filed against white owners alleging oral notice, when what all owners were entitled to was written notices at the correct address prior to the required hearings. No white owners had false complaints filed against them with the Department of Natural Resources, which complaint was found to be untrue. No white owners had their property condemned by secret ballot of the Hamburg Township Board. Petitioner never even received notice and an opportunity to defend prior to that decision and unanimous vote of condemnation, a vote based upon the recommendation of who else, Township Engineer John Adams. Petitioner was shocked, embarrassed, and humiliated to see a taped broadcast of the program. It had been televised live on cable television to all the white owners in the township, and then repeatedly played back over and over and over again.

Respondent Hamburg Township is a rich white suburb near Detroit. The neighbor to the left of Petitioner's property is a retired vice president of General Motors, but he is not a retired minority vice president. The neighbor to the right of Petitioner's property is a multimillionaire sports athlete, but he is not a multimillionaire minority sports athlete. When Petitioner drives through Hamburg Township, she doesn't see anything but white motorists. When she walks into the Hamburg Township offices, she doesn't even see one minority employee. When she met with the utilities coordinator she was treated with haughty disrespect. But she noticed the utilities coordinator had treated the white owner ahead of her with both courtesy and respect. Her demeanor towards Petitioner then changed, and became hostile and combative. The utilities coordinator even refused to allow Petitioner to place her hands upon, or pick up and read, a copy of Ordinance 69. Not until the Township Clerk intervened and ordered her to do so. This utilities coordinator insisted she had mailed the notice of the 2nd Public Hearing to Petitioner's correct address, which Petitioner told her she had never received. But this utilities coordinator admitted in

an affidavit later that she had mailed not only the notice of the 2nd public hearing to the wrong address, but the notice of the 1st public hearing to the wrong address as well.

Hamburg Township is an enclave of rich white Americans, and township officials want it to stay that way. Respondent operates a multimillion dollar sewer system without meters. This allows Respondent to charge different rates for the same commodity sewage disposal. A family of eight white persons is charged roughly $12,700 for sewage removal. But because Petitioner has rented to racial minorities in the past, does so presently, and will continue to do so in the future, Petitioner is being charged $38,073.79 for sewage removal for four people. She is the only owner within the disputed special assessment district to receive such discriminatory pricing. She is being forced to pay three times as much for half the amount of sewage removal. And this Court is now being asked not to rule on this issue by Respondent, because it is a state issue. Township officials don't want racial minorities in their township. They might as well pass a law that commodity gas stations within the township are required to charge a carload of four white people $2.00 a gallon for gas, but a carload of four non-whites are to be charged $6.00 a gallon. Racial discrimination, subtle or otherwise, should not be allowed for either the sale of a commodity like gasoline or for the sale of a commodity item like sewage disposal. Both can be fairly priced by the installation of meters to measure actual commodity usage. Hamburg Township is using the lack of sewer meters to discriminate against Petitioner because she is a non-white property owner, and against her tenants, who in the past and future may be non-white tenants. This Court should compel Hamburg Township to install sewer meters so that it may not use the lack of meters to carry out its agenda of racial purity and discrimination.

This case never was about forcing Petitioner into a township sewer system. Petitioner's property is too far away. The real reason the township has repeatedly refused to settle this issue is because this case has always been about getting rid of Petitioner by burying her in a mountain of unreasonable sewer lien debt, using a triple special assessment and triple monthly usage charges, and then

attempting to confiscate Petitioner's non-white owned property after driving her out of business.

It did not escape the astute attention of the Michigan Attorney General's office handling the pending foreclosure that the alleged oral notification came after the 1st Public Hearing, and that there was therefore no notice, either written or oral, prior to the inclusion of the property at the 1st Public Hearing. The Attorney General's Office found this "deeply troubling". It elected to withhold this property from foreclosure pending the action by the Supreme Court of the United States on the issues raised in Petitioner's Writ of Certiorari, including deprivation of property without due process. The Michigan Attorney General's Office regards this as a federal question that should be handled by this federal Court.

I ask the Supreme Court of the United States to do so. The Michigan Tax Tribunal acknowledged that I had not received the written notices or hearings I was entitled to under the law. The Michigan Court of Appeals acknowledged that I had not received the written notices or hearings I was entitled to under the law. Under Federal law no governmental official may deny any federal rights to citizens of the United States, and no person may be deprived by a state court of a right secured by the Constitution. I have a right to be treated fairly and without racial discrimination, and I have a right to Equal Protection and Due Process under the Constitution of the United States. I ask this Supreme Court to protect and enforce those rights.

Respectfully submitted,

Rita C. Ferguson
Pro Se

January 25th, 2002

John A. Wilson, II
Environmental Sanitarian
Livingston County Health Department
2300 East Grand River
Howell, Ml 48843 – 7579

Dear Mr. Wilson,

Thank you for bringing this matter to my attention. I was surprised to receive your letter pointing out that there was effluent on my lawn at 11505 Dunlavy Lane, Whitmore Lake, Ml 48189. My husband mows the lawn at the lake every 10 days, and as of his last Fall mowing he had not observed any sewage on the surface of the lawn. Also, I went boating with my family in the Fall, and at that time did not notice a problem.

I received your letter January 3rd, 2002 and launched an immediate investigation. On Friday, January 4th, Photo 1, an area of lawn was discovered under the snow, with what appeared to be frozen liquid approximately 9 inches wide and 32 inches long. Digging below this area, the drainfield header pipe was discovered. That header pipe, Photo 2, had a hole in it. The hole was cut out and a Fernco adapter installed, Photo 3. This emergency repair was then covered with fresh soil, Photo 4, after the contaminated soil was removed. A week later this area was reexamined and no effluent was observed on the surface. Subsequently, a section of watertight header pipe was installed in place of the Fernco adaptor. As of today's date, no sewage has been observed seeping to the surface.

I would very much like to believe that the hole in my drainfield pipe was accidental. However, for reasons which I would be willing to discuss with you privately, I now believe this matter to be an act of vandalism, or worse, a malicious and intentional destruction of my

property. After making the emergency repair, the question then naturally arose - are there any other holes? Either in the drainfield header, or the lateral lines. A painstaking and thorough examination of the rest of the header and lateral lines was undertaken. The condition of these lines was documented to provide a baseline for comparison should damage to my drainfield occur in the future. These lines were observed to be functioning normally. The soil was sandy, with naturally occurring gravel. I am pleased to report that no additional holes were found.

To followup, I requested a status report from the four individuals living on the premises and received the attached letters. Please read them.

Section 301.18 which you cite in your letter provides... "Such a sewage system as condemned shall be repaired... within a period of time specified by the Health Officer." My repair complies with Section 301.18. Furthermore, the tenant letters support the proposition that the existing sewage disposal was and is, other than the hole, functioning properly. This is not a Section 301.18 scenario where there is a failing drainfield that " ...will not accept sewage effluent resulting in interference with plumbing fixture use..." Nor is the sewage effluent exceeding the infiltrative capacity of the soil. As noted, the soil was observed to be sandy, with naturally occurring gravel. These tenant letters confirm that there has been no past history of a drainfield problem. To put it another way, if someone were to knock a hole in anyone's header pipe, sewage effluent would eventually seep to the surface. That hole would not indicate an inadequate or failing sewage disposal system. I believe we have a scenario where someone deliberately knocked a hole in my pipe. That hole has been repaired and the sewage disposal system is again functioning normally, just as it was prior to the damage.

One final point. You cite a state statute and county sanitary code in your letter. I went online and read those laws. Section 1275 (c) of the state statute provides: "Available public sanitary sewer system means... passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates."

The Livingston County Health Code adopts the same standard.
301.02 states, "Available public sanitary sewer means a public sanitary sewer... passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates." The subject premises, 11505 Dunlavy Lane are 550 feet from the Hamburg Township Sanitary Sewer, as measured by the Township engineer. Therefore the Hamburg Township sewage system is not available and reasonably accessible as defined by the law.

I would like you to reinspect the violation you cited: "M. Allow sewage to accumulate on the surface of the ground or to flow into an open drain, ditch or body of water." I am confident you will find no further sewage on the surface of the ground. I would request that should you plan to reinspect, that you make this inspection at a mutually agreeable date and time, as I would like either myself or my husband to be present. Please let me know.

Sincerely,

Rita Ferguson

January 24, 2002.

To whom it may concern:

I have lived in Apartment 1 at 11505 Dunlavy Lane in Hamburg Township since May 2001. During this time, up to and including the present, I have had no problems with the drains. There have been no back-up, nor drainage problems.

I trust that this information will be helpful to you. Please contact me directly if I can provide further information.

Sincerely,

Bronwen Wildflower Gates, Ph. D.

11505 Dunlavy Lane, # 1,
Whitmore Lake, MI 48189
(734) 424-2744

11505 Dunlavy La. #2
Whitmore Lake, Mi. 48189

January 20, 2002

9715 Daisy La.
Dexter, Mi. 48130

Dear Rita,

I just wanted to write to inform you that I have had no plumbing problems in my
apartment. The sinks & shower all work fine. Water drains normally from them;
faucets produce water when turned on. The toilets flush normally & I have had no back up problems.

Thanks again for providing a beautiful well maintained home for me for all these years.

Sincerely,

Ingrid Weisz

1/20/02

To: Rita Ferguson
RE: Plumbing at 11505 Dunlavy Lane #3

Dear Rita;

I am writing to let you know that the plumbing in my apartment is functioning properly. For that matter, the plumbing here has never been a problem. I have not experienced any back-ups or slow drains. To repeat, the plumbing in this apartment works fine.

For anyone who may have concerns as to your upkeep of this property, as a tenet for nearly 12 years, I can say that you and Mike have always worked to make this a very livable and enjoyable place.

Should there be any further question about 11505 Dunlavy Lane, please by all means, feel free to direct them to me.

Sincerely,

Jason G. Voeller

January 21, 2002

Rita Ferguson
9715 Daisy Lane
Dexter, MI 48130

Dear Rita,

I wanted to take a moment to comment on the quality of the water and sewer service at 11505 Dunlavy Ln. #4, where I've resided since the summer of 1998.

I am glad to say that I've never had any problem with plumbing; both toilet and water supply have been working fine, with plenty of water pressure at the shower as well as the bathroom and kitchen fixtures. The only inconvenience I've had since I moved in was due to a failed element in the water heater, which Mike fixed within an hour or two of my phone call to him late last year. In addition, the toilet has always done its job; in fact I can say that I've never even needed a plunger!

Please let me know if you have any specific questions; I'd be happy to answer any time. Please keep up the good work.

Sincerely,

Devon M. Smith

11505 DUNLAVY LANE #4 WHITMORE LAKE, MT 48189-9374 USA
PHONE: (734) 426-4376 FAX: (734) 426-8160 E-MAIL: DSMITH1~PILOTINDUSTRIES .COM

March 9, 2002

David Lucik, RS
John A. Wilson II
Livingston County Health Department
2300 East Grand River
Howell, Ml 48843-7579

Dear Mr. Lucik & Mr. Wilson:

It was a pleasure to meet both of you on February 27, 2002 at 11505 Dunlavy Lane, and I appreciate you taking the time to meet with my husband and me. On that day you indicated that you were satisfied with the repair that had been made to the hole in the header pipe, a hole which had been causing effluent to be discharged to the surface. You were able to confirm that there was no longer effluent on the surface. It is my recollection that you said no permit was required for this repair and that you would continue to periodically monitor the drainfield. You indicated that as far as inspecting the rest of the lines, that there was an easier way to inspect them. The inspection of the lateral lines was undertaken because of a concern that there may have been or may be additional holes deliberately placed, because of the recent dispute with the Township, and because no effluent had been observed in the Fall. You agreed that under the circumstances you would have been suspicious, too. If holes were punctured in the tops of the pipes in other places in the drainfield, my concern was that these holes would fill up with dirt and block the pipes. The only way to be certain that there were no other holes was to uncover those pipes and visually inspect them. I take exception to your characterization of this as a reconstruction rather than an inspection. The existing sewage system was neither constructed, extended nor altered from its original existing form. Any pipes broken or cracked during the inspection process were replaced. Because you felt this was getting into a gray area, I offered to dig up the lines so that they could be inspected. David Lucik

indicated this was not necessary and would cause additional pipes to be broken. So how do we resolve this permit issue?

You cite as an additional direct violation the 100 feet minimum isolation distance required between surface water and absorption system. The drainfield location for this property has been at the present location since the property was built in 1949. At that time a channel was dug extending some 300 feet from the lake to a point in front of the house. I have to wonder why the Livingston County Health Department waited 53 years to cite this as a direct violation.

You told me that if we were unable to resolve our dispute with the Township, and if after continual monitoring the existing drainfield actually failed, we could relocate the drainfield. The relocation site discussed was further west on the property where there has existed since 1993 an approved Livingston County Health Department drainfield which John Wilson remembered working on. In your letter, however, you make no mention of this agreement-an agreement, which David Lucik suggested and characterized on 2-27-02 as fair.

I request a hearing before the Health Officer. Please mail me the required petition form with instructions and tell me what fee needs to be paid. I will submit this to you. If this letter is sufficient to request the hearing, then tell me what fees need to be paid. I will then wait to hear on what date the hearing will be.

Please forward me a copy of the second complaint you reference in your letter and the information you say you received from Hamburg Township on the same day as the reinspection, February 27,2002.

I would also like to get from you a letter endorsing the settlement proposal we discussed with you, which you encouraged us to present to the Township Board of Trustees. A letter from you might go a long way towards persuading the Township Board to consider this proposal. As you recall,

the proposal was to hook up to the sewers with an assessment of 1 REU and a water meter installed as Ordinance 69 provides for other township businesses, so that sewage use could be monitored, and an adjustment to the assessment made if usage exceeded 1 REU.At the time, all of us thought this would be a win win situation, which the Board ought to consider. So I would appreciate a letter with your endorsement.

Sincerely,

Rita Ferguson